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Thursday
March 17, 1988

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**WHERE:** Office of the Federal Register,
First Floor Conference Room,
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### BOSTON, MA

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**WHERE:** Thomas P. O'Neill Federal Building
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**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8123

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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1421

### Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The final rule will change provisions relating to when the President or Executive Vice President, CCC, may temporarily waive one or more of the standards of this subpart.

**EFFECTIVE DATE:** April 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5647.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since implementation of the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that this rule will not increase the federal paperwork burden for individuals, small businesses, and other persons. CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Therefore, the Regulatory Flexibility Act is not applicable to this rule, and a Regulatory Flexibility Analysis was not prepared.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as asking price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC may not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Presently, program requirements permit producers to obtain price support loans on their grain only when it is stored in approved space on the farm or in commercial warehouses. In a small number of specific instances, some producers as well as commercial warehousemen, may not have sufficient storage space available to meet their needs. Some producers may be required to haul their grain a considerable distance to a CCC approved warehouse with space available in order to obtain a price support loan even though a commercial warehouse may be available within the community that is not CCC approved because it cannot meet all of these standards. The regulations at 7 CFR 1421.5557 now permit the CCC to exempt in writing, applicants in such an area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard the interests of CCC.

However, warehousemen who are currently under contract with CCC are required to meet all of the terms and conditions of the regulations. The status of the warehouseman, particularly his ability to meet financial requirements of the standards, may have changed. This places the President or Executive Vice President, CCC, in the position of being unable to waive one or more of the standards even if the warehouse space is needed by CCC.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on August 17, 1987, 52 FR 30689, requesting comments with respect to changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and ended on September 16, 1987.

An amendment to the regulations at 7 CFR 1421.5557 was proposed which would permit the President or the Executive Vice President, CCC, to temporarily waive one or more of the standards for warehousemen who are currently under contract with CCC when it is determined that the warehouse services are needed in a local area.

One comment was received from a national grain and feed association concerning the proposed rule. They opposed any rule which would pemit CCC to temporarily waive one or more of the standards for warehousemen who are currently approved under the Uniform Grain Storage Agreement (UGSA). Their main objection was that CCC may waive the financial requirements in the standards and thereby provide less security for grain depositors and an economic advantage to UGSA warehouses obtaining the exemption. In addition, they believed that CCC did not articulate adequately the extent to which the waiver authority would be used and did not demonstrate the need for the change.

The Standards of Approval are intended to protect the interest of CCC. Although some benefit may accrue to other depositors, that benefit is solely incidental to the primary purpose of the Standards; the protection of the interest of CCC. The regulations at 7 CFR 1421.5557 now permit the CCC to exempt, in writing, applicants for the UGSA from one or more of the standards when it is determined that the warehouse services are needed in the local area. During 1987, CCC has waived the standards for four warehousemen. In three of these cases, the warehousemen were required to furnish irrevocable Letters of Credit to meet their maximum net worth requirements. The three warehousemen were doing business with financial institutions that were not insured by the Federal Deposit Insurance Corporation (FDIC). The financial institutions furnished the warehousemen with an irrevocable Letter of Credit and the standard requiring all irrevocable Letters of Credit be issued by a bank that is insured by FDIC was waived temporarily until the warehousemen were able to obtain a Letter of Credit from a FDIC insured bank.

The fourth waiver granted this year involved a parent company's wholly-owned subsidiary that purchased a new warehouse. The waiver permitted the parent company to submit a financial statement, which included the financial position of the wholly-owned subsidiary and the new warehouse, to meet CCC financial requirements for the new warehouse. However, before the waiver was granted, the parent company had to execute a Guarantee Agreement which required the parent company to promptly pay any monies which become due and owing to CCC from the new warehouse.

As evidenced by the four waivers granted this year, the CCC exercises prudent control over the waiver authority. In each of the cases cited, CCC was not at a greater financial risk because it granted the waivers nor did any of the warehouses involved have an economic advantage over their competitors. The CCC cannot predict the frequency or the specific reason the waiver authority will be used in the future. However, the CCC intends to use the waiver authority only when: (1) It is in the best interest of CCC; (2) there is no greater financial risk to CCC, and (3) the warehouse will meet all standards within a short period of time.

Accordingly, it has been determined that the provisions of the proposed rule should be adopted without change as a final rule.

### List of Subjects in 7 CFR Part 1421

Grain, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

### Final Rule

Accordingly, the regulations at 7 CFR part 1421 are amended as follows:

## PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421, *Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed* continues to read as follows:

**Authority:** Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 1072 (15 U.S.C. 714 b and c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99-198, unless otherwise noted.

2. Section 1421.5557 is revised to read as follows:

**§ 1421.5557 Exemption from requirements.**

If warehousing services in any area cannot be secured under the provisions of the subpart and no reasonable and economic alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may temporarily exempt, in writing, applicants for storage agreements and warehousemen who are currently under contract with CCC in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to satisfactorily safeguard the interests of CCC.

Signed at Washington, DC on March 11, 1988.

**Milton Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 88-5833 Filed 3-16-88; 8:45 am]

BILLING CODE 3410-05-M

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 101

**[T.D. 88-14]**

## Change in the Customs Service Field Organization—Port Manatee, FL

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to establish a new Customs port of entry to be known as Port Manatee in the Tampa, Florida, Customs District of the Southeast Region. The change is part of a Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

**EFFECTIVE DATE:** April 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Bernie Harris, Office of Inspection and Control (202-566-9425).

**SUPPLEMENTARY INFORMATION:** As part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the **Federal Register** on August 25, 1987 (52 FR 32025) proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to change the Customs field organization by establishing a new Customs port of entry at Port Manatee, Florida, within the Tampa, Florida, Customs District, Southeast Region.

### Discussion of Comments

Three comments were received in response to the **Federal Register** notice. Two comments strongly supported the proposal. A third comment expressed some concern about a possible reduction of Customs service presently provided at Tampa which may be caused by the creation of a new port of entry. Since we already service Port Manatee out of our Tampa location, the assignment of a Customs officer thereto would not affect our current ability to service Tampa. Therefore, after further review of the matter, Customs has determined that it is in the public

interest to establish a Customs port of entry at Port Manatee, Florida.

### Geographical Description

The geographical limits of Port Manatee, Florida, will be that portion of Manatee County bounded on the north by the Manatee-Hillsborough County line, on the east by U.S. Interstate Highway I-75, on the south by State Highway 64, but excluding the western offshore island communities of Anna Maria, Bradenton Beach, Holmes Beach, and Longboat Key.

### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon small entities in the Tampa, Florida, area, it is not expected to have a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12291

Because the amendment relates to the Customs field organization, and will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

### Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

### Authority

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR Parts 1949–1953 Comp., Ch. II), and pursuant to the authority provided by Treasury Department Order No 1010–5 (47 FR 2449).

### List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

### Amendments to the Regulations

## PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624, Reorganization Plan 1 of 1965: 3 CFR 1965 Supp.

### § 101.3 [Amended]

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by inserting in appropriate alphabetical order, "Port Manatee, including the territory described in T.D. 88–14" in the column headed "Ports of entry" in the Tampa, Florida, Customs District of the Southeast Region.

**Wm. Rosenblatt,**

*Acting Commissioner of Customs.*

Approved: March 1, 1988.

**Francis A. Keating II,**

*Assistant Secretary of the Treasury.*

[FR Doc. 88-5883 Filed 3-16-88; 8:45 am]

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## Internal Revenue Service

## 26 CFR Part 1

**[T.D. 8188]**

## Income Tax; Consolidated Return Regulations; Adjustment on Disposition of Stock of Subsidiary

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that add new § 1.1502–32T to the consolidated return regulations. The temporary regulations supplement the adjustment under § 1.1502–32(g) on the disposition by a member of stock of a subsidiary. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

**EFFECTIVE DATE:** These regulations are effective for stock of a subsidiary that ceases to be a member of an affiliated group filing a consolidated return during a taxable year of the group ending after November 30, 1987. A member may elect to apply the new rules to stock not otherwise covered by such rules if the stock is disposed of in a taxable year ending after November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (Telephone 202–566–3458, not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document adds temporary regulations § 1.1502–32T to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

### General Description

Section 1.1502–32(g) of the consolidated return regulations provides that when a subsidiary in a group filing a consolidated return leaves the group, members of the group owning stock in the subsidiary must reduce the basis of such stock by the excess of the net positive adjustments for all consolidated return years over the net negative adjustments for all consolidated return years. The reduction is made on the first day of the subsidiary's first separate return year, and it applies only to stock retained by members. Section 1.1502–32(g) also applies if a member that owns stock in a subsidiary leaves the group. The purpose of the reduction is to prevent artificial losses when the stock retained by the member is subsequently sold.

Members of a group filing a consolidated return are subject to the investment adjustment rules of § 1.1502–32. These investment adjustment rules require that the basis of the stock of subsidiary members be increased to reflect undistributed earnings and profits and decreased upon the distribution of these earnings and profits. The effect of the investment adjustment rules is to ensure that the income and loss of members of a consolidated group are taken into account only once in computing the taxable income of the group. Without § 1.1502–32(g), during a separate return year a subsidiary could distribute consolidated earnings and profits without the members making a corresponding reduction in the basis of their retained stock. Thus in separate return years, members would retain the high basis in the subsidiary's stock that

they obtained through positive investment adjustments for earnings and profits during the consolidated years. Absent the § 1.1502-32(g) reduction in basis, a separate return year distribution of the subsidiary's consolidated earnings and profits would set the stage for an artificial loss on the sale of the subsidiary's stock.

For example, assume that in 1986, corporation P forms subsidiary S with $100 capital. In 1986 and 1987, P and S file consolidated returns and S has earnings and profits of $200. On the last day of 1987, P's basis in the stock of S is $300 (due to the investment adjustment rules of § 1.1502-32). On December 31, 1987, P sells one-half of its S stock to corporation X, a nonmember, for $150. P has no gain on this sale ($150 amount realized less $150 basis in one-half S stock). On January 1, 1988, P's basis in its remaining S stock is reduced by $100 under the provisions of § 1.1502-32(g) (the portion of the $200 positive investment adjustment resulting from S's earnings that is attributable to P's remaining 50 percent stock ownership in S).

Absent § 1.1502-32(g), S could create an artificial loss by distributing its $200 earnings and profits ($100 to P and $100 to X) on January 1, 1988. P would not be required to make a negative adjustment to its basis in its remaining S stock to reflect this distribution, since S would no longer be a member of the P group and therefore would not be subject to the investment adjustment rules of § 1.1502.32. P's basis in the S stock it retained would remain $150, even though the value of the S stock held by P would be $50 following the distribution. Therefore, P could sell its remaining S stock for $50 and recognize a $100 loss on the sale.

Section 1.1502-32(g) prevents a distribution of consolidated earnings and profits by a subsidiary after disaffiliation from creating the potential for a subsequent artificial loss on the sale of the subsidiary's stock, by requiring a reduction in the basis of the stock at the time of disaffiliation. However, the reduction that § 1.1502-32(g) requires may cause harsh results in certain situations because the basis adjustment occurs at the time of disaffiliation, whether or not dividend stripping subsequently occurs.

To avoid the effect of § 1.1502-32(g), consolidated groups have utilized the deemed dividend provisions of § 1.1502-32(f)(2). Under § 1.1502-32(f)(2), a group may capitalize the earnings and profits of a subsidiary by treating the earnings and profits as distributed to the parent and immediately contributed by the parent to the capital of the subsidiary. After a deemed dividend, there generally is no net positive adjustment remaining in the stock of the subsidiary. Instead, the basis of the subsidiary's stock has been increased by the deemed capital contribution. There is no need to apply § 1.1502-32(g), since there are no longer any earnings and profits in the subsidiary.

The deemed dividend, however, is available only to groups that own 100 percent of the subsidiary's stock on each day of its taxable year. Also, since a deemed dividend applies to the subsidiary's earnings and profits account as of the last day of the prior taxable year, it cannot be used to capitalize earnings and profits accumulated in the final consolidated return year. Groups that own subsidiaries with minority shareholders have used the consent dividend provisions of section 565 as a substitute for the deemed dividend provisions. Groups also have used the consent dividend to capitalize the earnings and profits of the subsidiary for its final consolidated return year. T.D. 8166, published December 15, 1987, restricts the use of consent dividends under section 565 to corporations that are subject to the accumulated earnings tax, personal holding companies, foreign personal holding companies, regulated investment companies, and real estate investment trusts. Because of the restrictions placed upon the use of consent dividends by T.D. 8166, most groups do not qualify to use consent dividends.

**Explanation of Provision**

The temporary regulations do not change the amount of the adjustment, and they continue to treat the portion of the adjustment in excess of the basis of the adjusted stock as immediately includible in income as income described in § 1.1502-19(a). The temporary regulations, however, do not immediately reduce basis when a subsidiary (or a member that owns the subsidiary's stock) leaves the group. Instead, the basis reduction is deferred, generally until the subsidiary makes a distribution that would have caused a reduction in the basis of its stock had affiliation continued to exist.

The deferral of the basis reduction is accomplished through the establishment of a basis reduction account that applies to the stock of the subsidiary retained by the member. The basis reduction account also applies to any stock acquired by the member in exchange for the disaffiliated subsidiary's stock if the acquired stock has a substituted basis in the hands of the member. In addition, it continues to apply if the stock is transferred to another member. However, if the stock is transferred to a nonmember corporation that is related to the transferror corporation within the meaning of section 304, the basis of the stock is reduced, immediately before the transfer, by the amount of the basis reduction account, and the basis reduction account is eliminated. A special rule provides for the elimination of a basis reduction account when a nonmember whose stock is subject to the basis reduction account becomes a member.

An anti-duplication rule is provided to deal with cases where a distribution of earnings and profits would result in reductions in basis under both the temporary regulations and other provisions of the Code and regulations.

The regulations also provide that members owning stock of a subsidiary that ceased to be a member of the group in a taxable year ending on or before November 30, 1987, may elect to apply the new rules to stock disposed of in a taxable year of the group ending after November 30, 1987. Taxpayers that make this election must certify that they have the information necessary to determine these adjustments.

**Special Analyses**

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control number 1545-1046).

**Drafting Information**

The principal author of the temporary regulations is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**List of Subjects in 26 CFR 1.1501–1 through 1.1564–1**

Income taxes, Controlled group of corporations, Consolidated returns.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

## PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * § 1.502–32T also issued under 26 U.S.C. 1502.

**Par. 2.** Section 1.1502–32 is amended by adding paragraph (g)(4) to read as follows:

**§ 1.1502–32 [Amended]**

* * * * *

(g) * * *

(4) For dispositions of stock in taxable years ending after November 30, 1987 see § 1.1502–32T.

**Par. 3.** There is added immediately after § 1.1502–32 a new § 1.1502–32T to read as follows:

**§ 1.1502–32T Investment adjustments (temporary).**

(a) *Adjustment on disposition*—(1) *Amount of adjustment.* A member owning stock in a subsidiary shall determine the net basis increase in each share of such stock that the member owns on the first day of the first separate return year of the member or of the subsidiary, whichever occurs first. The net basis increase is the excess with respect to such share of—

(i) The net positive adjustment under § 1.1502–32(e)(2) for all consolidated return years, over

(ii) The net negative adjustments under § 1.1502–32(e)(1), plus any decreases under § 1.1502–32(f) (1)(i), for all consolidated return years.

(2) *Amount taxable.* If the net basis increase with respect to a share exceeds the basis of the share, the amount of the excess shall, as of the day immediately preceding such first day, be included in the income of the member as income described in § 1.1502–19(a).

(3) *Basis reduction on distribution*—(i) *General rule.* The amount of the net basis increase not included in income under paragraph (a)(2) is treated as a "basis reduction account." If subsequently there is a dividend distribution with respect to the share, the basis of the share is reduced under this section by the amount of the distribution, but only to the extent of the basis reduction account for that share. The basis reduction account is decreased by distributions to which the preceding sentence applies.

(ii) *Anti-duplication rule; earnings and profits adjustments.* Adjustments under paragraph (a)(3)(i) of this section to the basis of a share for distributions shall not duplicate adjustments otherwise applicable to the same distributions, such as adjustments under § 1.1502–32(b)(2)(iii) with respect to the consolidated return of another group. If the preceding sentence applies because of a reduction under § 1.1502–32, the basis reduction account is decreased, except to the extent a distribution is attributable to earnings and profits earned after the establishment of the basis reduction account. Appropriate adjustments shall also be made with respect to the earnings and profits of each member.

(4) *Special rules*—(i) *Nonmember becomes a member.* If a nonmember whose stock is subject to a basis reduction account becomes a member of the group with respect to which the net basis increase under paragraph (a)(1) of this section was determined, the basis reduction account for the stock is eliminated.

(ii) *Disposition of stock subject to a basis reduction account*—(A) *In general.* Except as provided in paragraph (a)(4)(ii) (B) and (C) of this section, if stock subject to a basis reduction account is disposed of by a member, the basis reduction account is eliminated.

(B) *Exchanges in substituted basis transactions.* If a member exchanges stock subject to a basis reduction account for stock of another corporation, and the member's basis in the stock received in the exchange is determined in whole or in part by reference to the member's basis in the stock exchanged, the stock received becomes subject to the basis reduction account, and the rules of this section apply to the stock received as if it were the stock exchanged. For purposes of the preceding sentence, a reorganization described in section 368(a)(1)(F) shall be considered to result in an exchange.

(C) *Transfers to members.* Stock that is subject to a basis reduction account in the hands of a transferor member will continue to be subject to the basis reduction account in the hands of a transferee member.

(D) *Reduction of basis in certain transactions.* If stock that is subject to a basis reduction account is transferred to a nonmember, and the nonmember is controlled by the transferor within the meaning of section 304(c), the basis of the stock is reduced, immediately before the transfer, by the amount of the basis reduction account at that time and the basis reduction account is eliminated.

(iii) *Exchange of member stock for nonmember stock creating a basis reduction account.* If a member exchanges stock of a member subsidiary for stock of a nonmember, and the member's basis in the stock received in the exchange is determined in whole or in part by reference to the member's basis in the stock exchanged, then the stock of the nonmember shall be treated as becoming subject to this section as a result of the exchange, as if the member subsidiary had become a nonmember immediately before the exchange.

(5) *Example.* The following example illustrates the application of paragraph (a) of this section.

*Example:* (i) Corporation P forms corporation S with a capital contribution of $100. P and S file a consolidated return for 1987. S has $100 of earnings and profits for 1987, which increases P's basis in the S stock by $100. On January 1, 1988, X, the common parent of an unrelated group, buys all the stock of P, and P and S are included in the consolidated return of the X group for 1988. During 1988, S has earnings and profits of zero, and it distributes $10 to P. On January 1, 1989, P sells all of the stock of S to an unrelated purchaser.

(ii) Under paragraph (a)(1) of this section, P must determine its net basis increase in the stock of S as of the first day of P's or S's first separate return year. Under § 1.1502–1(e), consolidated return years of the X group are separate return years of the P group, and the computation is therefore made as of January 1, 1988. The net basis increase is $100. Since this amount is less than $200, the basis of the stock, no amount is taxable under paragraph (a)(2) of this section. The basis of the S stock is not reduced under this section on January 1, 1988, but a basis reduction account is established under paragraph (a)(3)(i) of this section in the amount of $100.

(iii) The $10 distribution by S is a distribution to which this section applies, since (from the standpoint of the former P group) it is a dividend distribution to a member with respect to stock of a subsidiary for which there is a basis reduction account. However, the distribution also results in a basis reduction in the stock of S under § 1.1502–32(b)(2)(iii)(c), since (from the standpoint of the X group) it is a distribution of earnings and profits accumulated in separate return years of S. Under paragraph (a)(3)(ii) of this section, the reduction under paragraph (a)(3)(i) is not made, and since the distribution is not attributable to earnings and profits earned after the basis reduction account was established, the basis reduction account is decreased from $100 to $90.

(iv) P's basis for determining gain or loss on the sale of the S stock is $190. The remaining $90 basis reduction account in the stock is eliminated under paragraph (a)(4)(ii)(A) of this section as a result of P's sale of the stock.

(b) *Effective date*—(1) *General rule.* Paragraph (a) of this section applies, and § 1.1502–32(g) does not apply, to stock of a subsidiary that ceases to be a member of a group during a taxable year of the group ending after November 30, 1987.

(2) *Election to apply paragraph (a).* A member owning shares of stock of a subsidiary to which paragraph (a) of this section does not apply, may elect to have paragraph (a) and not § 1.1502–32(g) apply to shares disposed of in a taxable year of the group ending after November 30, 1987. The election shall contain a certification that the member has the information necessary to determine the adjustments required by paragraph (a) of this section. The election is made by attaching a statement to the return of the member for the taxable year in which the stock is disposed of. To the extent that the basis of stock is increased pursuant to an election under this paragraph (b)(2), appropriate adjustments shall be made to the earnings and profits of each member for the taxable year in which the election is made and subsequent years to reflect such increase in basis and, as appropriate, adjustments later made to the basis reduction account.

The provisions contained in this Treasury Decision are needed to immediately amend the consolidated return regulations in response to the restrictions placed upon the use of consent dividends by temporary regulations under section 565. It is therefore found impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: March 14, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

[FR Doc. 88–5907 Filed 3–14–88; 5:14 pm]

BILLING CODE 4830–01–M

## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

### 29 CFR Part 452

### Candidacy Age Requirements in Union Officer Elections

**AGENCY:** Office of Labor-Management Standards, Labor.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Labor's interpretative regulations concerning restrictions on candidacy for union office which are based on personal characteristics. The amendment provides that a union's general maximum age restriction on candidacy would be unreasonable. The amendments are made, in part, because of recent amendments to the Age Discrimination in Employment Act of 1967.

**EFFECTIVE DATE:** March 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Kay Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Washington, DC 20210; telephone 202–523–7373 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Department of Labor's interpretative regulations on union officer elections under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), are set forth at 29 CFR Part 452. Those regulations provide at § 452.46 that a labor organization may establish certain restrictions on the right to be a candidate based on personal characteristics which have a direct bearing on fitness for office and which are not inconsistent with any Federal law. Section 452.46 presently indicates that a compulsory retirement age for officers, consistent with Federal law, would be an acceptable basis on which to restrict candidacy in LMRDA officer elections. Amendment is needed to reflect a recent revision of the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits a labor union's general compulsory retirement of individuals.

The ADEA provides at 29 U.S.C 623(c) that it is unlawful for a union to "limit, segregate, or classify its membership * * * in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities * * * because of such individual's age." Candidacy for union office has been regarded as an employment opportunity within the meaning of the ADEA.

As originally enacted, the ADEA protections against age discrimination extended only to individuals between 40 and 65 years of age. It was amended in 1978 to extend those protections to individuals up to 70 years old. Public Law 99–592 has most recently amended the ADEA to remove the maximum age limit on its coverage. Effective January 1, 1987, the ADEA prohibits a labor organization's general compulsory retirement of individuals over forty years of age. A labor organization rule establishing a general compulsory retirement age for officers or a comparable age restriction on candidacy would, therefore, be inconsistent with the ADEA. Accordingly, such a rule would be an unreasonable restriction on candidacy in LMRDA elections.

#### Publication in Final

The undersigned has determined that this amendment of the regulations need not be published as a proposed rule as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553, since this rulemaking merely sets forth interpretative rules and general statements of policy. It is, thus, exempt under section 553(b)(A) of the APA.

#### Effective Date

Furthermore, the undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is interpretative and a statement of policy. Therefore, these amendments shall be effective upon publication. See 5 U.S.C. 553(d)(2).

#### Classification—Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to the regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2).

#### Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain any new collection of information requirement.

**List of Subjects in 29 CFR Part 452**

Labor unions.

**Adoption of Amendments of Regulations**

Accordingly, 29 CFR Part 452 is amended as set forth below.

## PART 452—[AMENDED]

1. The authority citation for Part 452 continues to read as follows:

**Authority:** Secs. 401, 402, 73 Stat. 532, 534; 29 U.S.C. 481, 482; Secretary's Order No. 3–84 (49 FR 20578).

2. Section 452.46 is revised to read as follows:

**§ 452.46 Characteristics of candidate.**

A labor organization may establish certain restrictions on the right to be a candidate on the basis of personal characteristics which have a direct bearing on fitness for union office. A union may, for example, require a minimum age for candidacy. However, a union may not establish such rules if they would be inconsistent with any other Federal law. Thus, it ordinarily may not limit eligibility for office to persons of a particular race, color, religion, sex, or national origin since this would be inconsistent with the Civil Rights Act of 1964. Nor may it establish a general compulsory retirement age or comparable age restriction on candidacy since this would be inconsistent with the Age Discrimination in Employment Act of 1967, as amended. A union may not require candidates for office to be registered voters and to have voted in public elections during the year preceding their nominations. Nor may it require that candidates have voted in the previous union election to be eligible. Such restrictions may not be said to be relevant to the members' fitness for office.

Signed at Washington, DC, this 14th day of March, 1988.

**Salvatore R. Martoche,**

*Assistant Secretary for Labor-Management Standards.*

[FR Doc. 88–5901 Filed 3–16–88; 8:45 am]

BILLING CODE 4510–86–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD5–88–003]**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the U.S. Army Corps of Engineers, Wilmington, North Carolina, the Coast Guard is changing the regulations governing the drawbridges across the Atlantic Intracoastal Waterway at mile 113.8 in Fairfield, at mile 157.2 in Hobucken, and at mile 195.8 in Beaufort, North Carolina, by restricting the number of bridge openings during the boating season. This action will accommodate the needs of vehicular traffic and reduce wear and tear on the machinery of these 50-year-old bridges, while still providing for the reasonable needs of navigation. This rule also consolidates all of the drawbridge regulations for the North Carolina segment of the Atlantic Intracoastal Waterway in one section.

**EFFECTIVE DATE:** These regulations become effective on April 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, at (804) 398–6222.

**SUPPLEMENTARY INFORMATION:** On September 8, 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** (52 FR 33836) concerning the bridges at Fairfield and Hobucken, North Carolina. The Commander, Fifth Coast Guard District also published the proposal as a Public Notice dated November 9, 1987. In the notice of proposed rulemaking, interested persons were given until October 26, 1987, to submit comments. In the public notice, interested persons were given until December 18, 1987, to submit comments.

On June 22, 1987, the Coast Guard published an interim rule with a request for comments in the **Federal Register** (52 FR 23441) concerning the Core Creek bridge at Beaufort, North Carolina. Interested persons were given until August 26, 1987, to submit comments. A public notice was not issued.

**Drafting Information**

The drafters of these regulations are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

**Discussion of Comments**

The U.S. Army Corps of Engineers has requested that the drawbridges at Fairfield and Hobucken, North Carolina, only be required to open on the hour and half hour, daily between 7:00 a.m. and 7:00 p.m., from April 1 through November 30, and that the Core Creek Bridge at Beaufort, North Carolina, only be required to open on the hour and half hour between 6:00 a.m. and 7:00 p.m., from April 1 through November 30. Both measures were intended to help alleviate highway congestion, but also to reduce wear and tear on these 50-year-old bridges, which are scheduled to be replaced by fixed bridges. Because of the difficulties the Corps of Engineers was having maintaining the Core Creek bridge at Beaufort, an interim rule with a request for comments was issued.

Three comments were received as a result of the public notice relating to the bridges at Fairfield and Hobucken. The Major of the City of Elizabeth City in a letter dated December 14, 1987, offered no objections to the change in the regulations, but expressed a concern for the lack of mooring facilities for vessels awaiting bridge openings. A letter from the Committee of 100 in Elizabeth City expressed the same views as the Mayor of the City of Elizabeth City and offered no objection to the change in the regulations. Since mooring facilities for vessels falls within the jurisdiction of the U.S. Army Corps of Engineers, the above mentioned letters have been forwarded to the U.S. Army Corps of Engineers in Wilmington, North Carolina, for consideration. The U.S. Fish and Wildlife Service in Raleigh, North Carolina, responded to the public notice offering no objection to the change in the regulations.

It is the Coast Guard's position that the lack of mooring facilities does not constitute a safety hazard for vessels waiting for a bridge opening. While the construction of such facilities would provide a convenience to the boaters, they are not necessary.

No comments were received in response to the interim rule for the Core Creek bridge.

Since the proposed amendments relating to the bridges at Fairfield and Hobucken and the interim rule for the Core Creek bridge will relieve highway congestion during the summer seasons, reduce the wear and tear on the bridge machinery, and will still provide for the reasonable needs of navigation, they are being adopted.

In addition, this rule consolidates all of the regulations governing drawbridges over the Atlantic Intracoastal Waterway in North Carolina into one section.

Since the regulations governing the S58 drawbridge across the Atlantic Intracoastal Waterway, mile 206.7, at Atlantic Beach, North Carolina, were revoked on December 8, 1987, paragraph (b)(4) of the proposal has been deleted and the remaining subparagraphs renumbered. (See the December 29, 1987, **Federal Register** [52 FR 49010] for the rule revoking those regulations.)

This rule also incorporates the final rule for the drawbridge across the Atlantic Intracoastal Waterway, mile

283.1, at Wrightsville Beach, North Carolina, which was published in the **Federal Register** on December 21, 1987 (52 FR 48263). That rule went into effect on January 20, 1988. As a result, paragraph (b)(6) of the proposed rule (renumbered as paragraph (b)(5)) has been amended to conform with that amendment.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of the proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05(g).

2. Section 117.821 is revised to read as follows:

**§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Wrightsville Beach, North Carolina.**

(a) The drawbridges over the Atlantic Intracoastal Waterway in North Carolina shall open on signal for public vessels of the United States, state and local government vessels, commercial vessels, and any vessel in an emergency involving danger to life or property.

(b) The drawbridges over the Atlantic Intracoastal Waterway in North Carolina shall open on signal for pleasure vessels, except that the following drawbridges may remain closed to pleasure vessels if they open on signal for waiting pleasure vessels at the times and during the periods specified below:

(1) S.H. 94 bridge, mile 113.7, at Fairfield, NC, from April 1 to November 30, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(2) S.R. 304 bridge, mile 157.2, at Hobucken, NC, from April 1 to November 30, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(3) S.R. 101 bridge, mile 195.8, at Beaufort (Core Creek), NC, from April 1 to November 30, between 6:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(4) S.R. 50 bridge, mile 260.7, at Surf City, NC, from May 1 to October 31, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

(5) S.R. 74 bridge, mile 283.1, at Wrightsville Beach, NC, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

(c) If a pleasure vessel is approaching a drawbridge, which is only required to open on the hour or on the hour and half hour, and cannot reach the draw on the hour or half hour, the drawtender may delay the required opening up to 10 minutes past the hour or half hour.

Dated: March 8, 1988.

**A. D. Breed,**

*Rear Admiral, U.S. Coast Guard; Commander, Fifth Coast Guard District.*

[FR Doc. 88-5889 Filed 3-16-88; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE INTERIOR

### Office of Hearings and Appeals

### 43 CFR Part 4

### Special Rules Applicable to Surface Coal Mining Hearings and Appeals

**AGENCY:** Office of Hearings and Appeals, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Hearings and Appeals promulgates final regulations to provide procedures for administrative review of the proposed assessment of individual civil penalties against a director, officer, or agent of a corporation under the Surface Mining Control and Reclamation Act of 1977. These rules are necessary to inform parties of who may petition for review of a proposed assessment, when and where the petition must be filed, what the contents of a petition must be, what must be proved at a hearing and who bears the burden of proof, and who may petition for a review of a decision by an administrative law judge. The intended effect of these regulations is to provide the mechanisms for administrative review of proposed individual civil penalties.

**EFFECTIVE DATE:** These rules are effective April 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone: (703) 235-3750.

**SUPPLEMENTARY INFORMATION:** On December 24, 1986, the Office of Hearings and Appeals (OHA) published proposed regulations providing procedures for administrative review of the proposed assessment of individual civil penalties against a director, officer, or agent of a corporation under section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1268(f) (1982). 51 FR 47846-46848 (Dec. 24, 1986). The Office of Surface Mining Reclamation and Enforcement (OSM) also published proposed regulations implementing section 518(f) on that day. *See* 51 FR 46838-46844 (Dec. 24, 1986) Comments on OHA's proposed regulations were received from five organizations. These comments are summarized and OHA's responses are provided in the following discussion.

Editorial changes have been made in the final rule to conform with the terminology used in the corresponding OSM rule on individual civil penalties. The document used to notify an individual concerning the assessment of a penalty is now called a "notice of proposed individual civil penalty assessment."

**1. Section 4.1302**

One comment argues that § 4.1302(a) "lacks the necessary flexibility for the protection of an individual's right to due process" and should be revised to allow the filing of a petition for review of a proposed assessment after 30 days of its service under extenuating circumstances such as "faulty service of the assessment or ambiguous nature of the propose assessment." "OHA should change the mandatory language which precludes the exercise of discretion to consider a petition filed late for good cause," the comment suggests, as well as delete the second sentence of proposed § 4.1302(b), which specifies the sanctions for untimely filing of a petition, because it has "no statutory support."

OHA distinguishes between deadlines for filing documents that inititate administrative review proceedings, which it regards as jurisdictional, and

deadlines for filing subsequent briefs or other pleadings. Untimely filing of documents in the former category, such as petitions for review under § 4.1302, mandates dismissal of the proceeding, while dismissal of the proceeding for untimely filing of documents in the later category is discretionary and depends in part on whether another party was prejudiced by the untimely filing. *See, e.g., James C. Mackey,* 96 IBLA 356, 359, 94 I.D. 132, 134 (1987). The distinction is well-recognized, *see, e.g., Pressentin,* v. *Seaton,* 284 F.2d 195, 199 (D.C. Cir. 1960), and may be established under the authority of 5 U.S.C. 301 (1982) as well as under the authority of the Surface Mining Act. *See* 51 FR 16319–20 (May 2, 1986). The suggestion is rejected.

**2. Section 4.1303**

One comment objected to the requirement in proposed § 4.1303(a)(3) that an individual filing a petition for review provide a copy of the permit, order or final decision that the corporate permittee is charged with violating. Such document might be difficult for an individual to find in time for filing within 30 days, especially if he has left the corporation, and it is more appropriate for OSM to produce them as part of its prima facie case, the comment argues. Finally, the comment notes, comparable regulations only require a petitioner to file items that have previously been served on him. *See, e.g.,* 43 CFR 4.1164(c).

The proposed regulation has been revised to require the filing only of all documents that OSM has served on the individual in connection with the proposed civil penalty. *See* 30 CFR 724.17(a), 846.17(a).

**3. Section 4.1304**

A comment observes that there is no sanction comparable to § 4.1302(b), second sentence (discussed above), for failure to comply with the requirement of § 4.1304 that OSM file an answer or motion, or a statement that it will not file an answer or motion, within 30 days of receipt of a copy of a petition. The commenter proposes that no extension be available for a filing under § 4.1304, and that failure to timely file in accordance with it be deemed to be a statement that OSM will not file anything in response to a petition.

OHA has held, as the commenter apparently recognizes, that OSM's failure to file an answer should not result in vacating a notice of violation or cessation order, absent extreme circumstances. *William Francis Rice,* 3 IBSMA 17, 88 I.D. 269 (1981). Although failure to comply with § 4.1304 would presumably be regarded similarly, the regulation is intended to require OSM to file either an answer or a motion or a statement that it does not intend to file a substantive answer or motion so that the administrative law judge will have a clear indication when the case is ready to be set for hearing. Although treating OSM's silence as a statement that it would not file anything would have the same effect as the proposed regulation, OHA prefers the definiteness that will result from requiring that it file one of the documents specified. The suggestion is not accepted.

**4. Section 4.1307(a)**

One comment objects that proposed § 4.1307(a)(1) goes beyond the authority of section 518(f) in authorizing imposition of an individual civil penalty for violation "of any requirement of the Act or implementing regulations," and states the quoted language must be stricken.

Section 518(f) authorizes a civil penalty for a director, officer, or agent of a corporation "[w]henever a corporate permittee violates a condition of a permit * * * or fails or refuses to comply with any order issued under section 521 of this Act * * *." § 4.1307(a)(1) has been revised to correspond to this language.

Under § 4.1307(a)(1), OSM can meet its burden by establishing a prima facie case of either a violation, or of a failure or refusal. In cases where an individual civil penalty is based on a failure or refusal, OSM need not prove the fact of a violation; it need only show that it cited a violation in an order issued to a corporate permittee. Section 518(f) of the Act subjects a director, officer or agent of a corporation to an individual civil penalty for the corporation's failure or refusal to comply with an applicable order, even where the director, officer or agent had no role in committing the underlying violation itself.

**5. Section 4.1307(b)**

Two comments object to the provision of proposed § 4.1307(b) that the "existence of a corporate permittee's violation * * * is conclusively established if the violation or order has been upheld in a final decision" in an administrative review proceeding before OHA. The commenters presume that the rule is based on principles of res judicata or collateral estoppel, but object that a corporate director, officer, or agent would not necessarily be either a party to administrative litigation involving the corporation's violation or in privity with the corporation. No precedent exists for "the concept of a *per se* application of collateral estoppel without a specific showing of the requisite privity," it is argued.

The question is when a director, officer, or agent of a corporation may be precluded from relitigating the issue whether that corporation violated a permit condition or failed or refused to comply with an order issued under section 521 or by the Secretary. The answer is that

> when an administrative body has acted in a judicial capacity and has issued a valid and final decision on disputed issues of fact properly before it, collateral estoppel will apply to preclude relitigation of fact issues only if: (1) there is identity of the parties or their privies; (2) there is identity of issues; (3) the parties had an adequate opportunity to litigate the issues in the administrative proceeding; (4) the issues to be estopped were actually litigated and determined in the administrative proceeding; and (5) the findings on the issues to be estopped were necessary to the administrative decision.

*Pantex Towing Corp.* v. *Glidewell,* 763 F.2d 1241, 1245 (11th Cir. 1985). *See United States* v. *Utah Construction & Mining Co.,* 384 U.S. 394, 421–22 (1966); *Nasem* v. *Brown,* 595 F.2d 801, 806–07 (D.C. Cir. 1979). Under these circumstances an individual may be collaterally estopped from contesting the existence of a corporate permittee's violation or failure or refusal to comply with an order.

The provision authorizing the preclusion of this issue has been added to § 4.1307(a)(1), proposed § 4.1307(b) has been deleted, and proposed § 4.1307(c) has been redesignated as § 4.1307(b).

**6. Section 4.1307(c)**

Three comments observe that, unlike 43 CFR 4.1155 in civil penalty proceedings involving permittees under section 518(a) of the Act, proposed § 4.1307(c) imposes the ultimate burden of persuasion on the individual to show by a preponderance of the evidence that the elements for imposing the proposed penalty have not been established. Unless a basis exists for distinguishing why the ultimate burden of persuasion should be allocated differently between the two proceedings, the comments suggest that § 4.1307(c) (now § 4.1307(b)) be revised to allocate this burden of persuasion to OSM as it is in § 4.1155.

43 CFR 4.1155 provides that OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty. As to the fact of violation, the allocation of the ultimate burden of persuasion to OSM in § 4.1155 is inconsistent with § 4.1171, which

allocates the ultimate burden to the applicant for review because "the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S.R. No. 128, 95th Cong., 1st Sess. 93 (1977)." 43 FR 34381 (Aug. 3, 1978). Because the allocation of the ultimate burden in § 4.1155 as to the fact of violation is inconsistent with this congressional intent, and because there are now contradictory ultimate burdens of persuasion as to the fact of violation in consolidated application for review/ petition for review of civil penalty proceedings involving the same notice of violation or cessation order (see section 518(b) of the Act and 43 CFR 4.1113), OHA has proposed an amendment to § 4.1155 that will allocate to OSM the ultimate burden of persuasion as to the amount of the civil penalty and allocate to the petitioner for review the ultimate burden of persuasion as to the fact of violation. 52 FR 38246 (Oct. 15, 1987). For these reasons, the allocation of the ultimate burden of persuasion in § 4.1307(b) as to § 4.1307(a)(1) will remain on the individual, as it will on the issue of whether he was an officer or director, since he will have readier access to facts on this issue. A new 4.1307(c) is added, however, providing that OSM bears the ultimate burden of persuasion as to whether the individual was an agent of the corporation, as to § 4.1307(a)(3), and as to the correctness of the amount of the civil penalty proposed, because these are issues it is appropriate for the government to demonstrate.

**7. Section 4.1308**

Section 4.1308(b) has been revised to conform when payment is due with 30 CFR 724.18 or 846.18.

**8. Section 4.1309**

One comment suggests OHA clarify whether a petition for discretionary review is required to exhaust administrative remedies before seeking judicial review under section 526 of the Act and, if so, specify that the time for seeking judicial review begins with the issuance of the Board's decision.

Filing of a petition for discretionary review is required for the exhaustion of administrative remedies. A statement is added to § 4.1309(f) that if a petition is denied by order, the decision of the administrative law judge shall be final for the Department, subject to 43 CFR 4.5. The date of such an order, or of a decision by the Board on the petition if it is granted, would be the date of the order or decision for purposes of section 526(a)(2).

Section 4.1309(g) has been added to provide that payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.

*Determination of Effects*

Because this rulemaking only provides administrative review procedures, the Department has determined that it is not major, as defined by Exec. Order No. 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

*National Environmental Policy Act*

The Department has determined that these rules will not significantly affect the quality of the human environment, on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, § 1.10.

*Paperwork Reduction Act*

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501.

*Drafting*

These rules were drafted by Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

**List of Subjects in 43 CFR Part 4**

Administrative practice and procedure, Mines, Penalties, Surface mining

For the reasons stated in the preamble, Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is amended by adding §§ 4.1300–4.1309 as set forth below.

Dated: February 2, 1988.

**Earl E. Gjelde,**

*Under Secretary.*

## PART 4—[AMENDED]

1. The authority citation for 43 CFR Part 4, Subpart L continues to read:

**Authority:** 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. 43 CFR Part 4, Subpart L, is amended by adding a new heading and §§ 4.1300–4.1309 to read:

**Petitions for Review of Proposed Individual Civil Penalty Assessments Under Section 518(f) of the Act**

Sec.



**Petitions for Review of Proposed Individual Civil Penalty Assessments Under Section 581(f) of the Act**

**§ 4.1300 Scope.**

These regulations govern administrative review of proposed individual civil penalty assessments under section 518(f) of the Act against a director, officer, or agent of a corporation.

**§ 4.1301 Who may file.**

Any individual served a notice of proposed individual civil penalty assessment may file a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Phone: 703–235–3800.

**§ 4.1302 Time for filing.**

(a) A petition for review of a notice of proposed individual civil penalty assessment must be filed within 30 days of its service on the individual.

(b) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in paragraph (a) shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment shall become a final order of the Secretary and any tardy petition shall be dismissed.

**§ 4.1303 Contents and service of petition.**

(a) An individual filing a petition for review of a notice of proposed individual civil penalty assessment shall provide—

(1) A concise statement of the facts entitling the individual to relief;

(2) A copy of the notice of proposal assessment;

(3) A copy of the notice(s) of violation, order(s) or final decision(s) the corporate permittee is charged with failing or refusing to comply with that have been served on the individual by OSM; and

(4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with § 4.1109 (a) and (b) of this part.

**§ 4.1304 Answer, motion, or statement of OSM.**

Within 30 days from receipt of a copy of a petition, OSM shall file with the Hearings Division an answer or motion, or a statement that it will not file an answer or motion, in response to the petition.

**§ 4.1305 Amendment of petition.**

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of OSM made in accordance with § 4.1304 of this part. Thereafter, a motion for leave to amend the petition shall be filed with the administrative law judge.

(b) OSM shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with § 4.1304 of this part. If the administrative law judge grants a motion to amend a petition, the time for OSM to file an answer, motion, or statement shall be set forth in the order granting the motion to amend.

**§ 4.1306 Notice of hearing.**

The administrative law judge shall give notice of the time and place of the hearing to all interested parties. The hearing shall be of record and governed by 5 U.S.C. 554.

**§ 4.1307 Elements; burdens of proof.**

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under sections 518(b) or 703 of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under §§ 4.1150–4.1158, 4.1160–4.1171, or 4.1180–4.1187, and 4.1270 or 4.1271 of this part, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;

(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in § 4.1307(a)(1) of this part and as to whether he was a director or officer of the corporation at the time of the violation or refusal.

(c) OSM shall have the ultimate burden of persuasion by a preponderance of the evidence as to whether the individual was an agent of the corporation, as to 4.1307(a)(3) of this part, and as to the amount of the individual civil penalty.

**§ 4.1308 Decision by administrative law judge.**

(a) The administrative law judge shall issue a written decision containing findings of fact and conclusions of law on each of the elements set forth in § 4.1307 of this part.

(b) If the administrative law judge concludes that the individual is liable for an individual civil penalty, he shall order that it be paid in accordance with 30 CFR 724.18 or 846.18, absent the filing of a petition for discretionary review in accordance with § 4.1309 of this part.

**§ 4.1309 Petition for discretionary review.**

(a) Any party may petition the Board to review an order or decision by an administrative law judge disposing of an individual civil penalty proceeding under § 4.1308 of this part.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing shall not be extended.

(c) A petitioner under this section shall list the alleged errors of the administrative law judge and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Board a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition for review under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition for review is granted the rules in §§ 4.1273–4.1276 of this part are applicable. If the petition is denied, the decision of the administrative law judge is final for the Department, subject to § 4.5 of this part.

(g) Payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.

[FR Doc. 88–5729 Filed 3–16–88; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Parts 571 and 572

**[Docket No. 74–14; Notice 54]**

## Anthropomorphic Test Dummies

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** In July 1986, this agency published a final rule mandating the use of the Hybrid III test dummy in compliance testing under Standard No. 208 beginning September 1, 1991. That same rule permitted the optional use of the Hybrid III test dummy for compliance testing beginning October 23, 1986. Eleven organizations filed petitions for reconsideration of this rule.

In response to these petitions, the agency is making three significant and several other changes to the final rule published in July 1986. The first of the significant changes is the suspension of the September 1, 1991 date for mandatory use of the Hybrid III test dummy in compliance testing. The mandatory use date is being suspended because, inadvertently, insufficient time was permitted to address the technical questions that may arise through the use of this new test dummy.

The second significant change is the amendment of the thorax deflection requirement to increase the permissible deflection of the Hybrid III thorax (chest) during compliance testing from two to three inches. The thorax deflection limit is being increased because it appears that most 2-point automatic belt designs used in current vehicles would not comply with the previously established two inch thorax deflection limit. The available accident data do not show an increased risk of thorax injuries to occupants of 2-point belt systems, as compared with occupants of 3-point belt systems or air bags. On the other hand, some limited biochemical data appear to suggest that 2-point belted occupants may suffer chest injuries more frequently than their 3-point belted or air bag restrained counterparts. These inconsistencies between the different data cannot be resolved at the present time. The agency intends to take the necessary steps to obtain sufficient data in this area to arrive at a satisfactory resolution of the inconsistencies. Given the current uncertainties, however, this rule establishes a three inch chest deflection

limit for the Hybrid III test dummy. The available data for 2-point and 3-point belt systems and for air bags indicate that this three inch limit is practicable and meets the need for safety.

The third significant change is a delay until September 1, 1990 in the use of the Hybrid III dummy for compliance testing of vehicles that do not use any restraint system to provide automatic occupant protection. Such restraint systems have generally been called "passive interiors". Up to this point, the agency has established the same chest deflection limit for Hybrid III dummies restrained by safety belts and those that are unrestrained. However, the agency wants to further investigate whether it is appropriate to establish separate chest deflection limits for unrestrained and safety-belt restrained Hybrid III dummies. Additionally, the agency wants to determine if the Hybrid III dummy with a three inch chest deflection limit is equivalent to the older type of test dummy when both are unrestrained. The temporary delay in the use of the Hybrid III test dummy for certain vehicles will provide the agency with sufficient time to determine whether a chest deflection limit lower than three inches should be proposed for unrestrained Hybrid III dummies, and, if so, which lower limit should be proposed.

This notice also makes several other changes to the July 1986 rule in response to the petitions for reconsideration. These are:

1. This notice adjusts the required calibration responses for the dummy's thorax and femur. The thorax force response adjustment is necessary to reflect the characteristics of the dummy's rib cage structure when the ribs are manufactured with new rib damping material. The femur force adjustment narrows the acceptable force response range during calibration. Both of these adjustments will result in more consistently repeatable dummy impact responses during crash testing. NHTSA has made the appropriate adjustments to the drawing and specifications package for the Hybrid III dummy to reflect these changes.

2. This notice makes certain clarifying amendments to Standard No. 208 to permit the use of the Hybrid III test dummy for compliance testing with all the requirements of Standard No. 208 and to permit the use of both types of test dummies in any Standard No. 208 testing conducted before the use of the Hybrid III becomes mandatory.

**EFFECTIVE DATE:** The regulatory changes made in response to the petitions for reconsideration are effective on March 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley H. Backaitis, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4912).

**SUPPLEMENTARY INFORMATION:**

## Background

In December 1983, General Motors (GM) petitioned the agency to amend 49 CFR part 572, *Anthropomorphic Test Dummies,* to include specifications for the Hybrid III test dummy that GM had developed. GM stated in its petition that the Hybrid III test dummy provides more meaningful information about the occupant protection potential of a vehicle than does the test dummy specified in Subpart B of Part 572. GM also argued that the Hybrid III test dummy's impact responses during a crash are more representative of human responses. Additionally, GM stated that the Hybrid III allows the assessment of more types of potential injuries, with 31 total measurements as opposed to eight measurements with the Part 572 Subpart B test dummy. GM also claimed that the repeatability and reproducibility of the Hybrid III are as good as those of the Subpart B test dummy. In support of these claims, GM submitted numerous documents to the agency.

After evaluating the petition and the supporting documents, NHTSA published a proposal on April 12, 1985 (50 FR 14602). That notice proposed to adopt the Hybrid III test dummy as an alternative to the Part 572 Subpart B test dummy for compliance testing under Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) until September 1, 1991. After that date, the agency proposed to use only the Hybrid III test dummy for compliance testing under Standard No. 208.

The agency proposed that action because it tentatively concluded that the Hybrid III test dummy appeared to represent an appreciable advance in the state-of-the-art of human simulation. NHTSA was particularly interested in the Hybrid III test dummy because of its apparently superior biofidelity and updated anthropometry, as compared with the Part 572 Subpart B test dummy. Further, because the Hybrid III test dummy has the capability of monitoring almost four times as many injury indicating parameters as the Subpart B test dummy, it can be used to measure injury producing forces, accelerations, deflections, moments, etc. for areas of the body that are not instrumented in the Subpart B test dummy. For instance, the Hybrid III test dummy has instrumentation capable of measuring injury producing forces experienced by the neck and lower legs. Although these body areas show a high incidence of serious and/or disabling injuries in crashes, the agency cannot make use of the Subpart B test dummy to evaluate the extent of the protection afforded to these body areas by vehicle safety systems. Because of these attributes of the Hybrid III test dummy, NHTSA believed that it should eventually replace the Subpart B test dummy as the tool used to evaluate the protection that vehicles afford occupants during frontal crashes.

## The Final Rule

After evaluating the comments on the April 1985 proposal, NHTSA published a final rule adopting the Hybrid III test dummy on July 25, 1986 (51 FR 26688). This final rule made some adjustments to the calibration procedures proposed to be used with the Hybrid III test dummy. The calibration procedures involve a series of static and dynamic tests of the test dummy components to determine whether the responses of the dummy fall within specified ranges. These calibration procedures help ensure that the test dummy has been properly assembled and that the assembled test dummy will give repeatable and reproducible results during crash testing. (Repeatability refers to the ability of the same test dummy to produce the same results when subjected to identical tests. Reproducibility refers to the ability of one test dummy to provide the same results as another test dummy built to the same specifications.)

The preamble to the final rule also stated that the agency had concluded that the two types of test dummies were equivalent; i.e., when both test dummies were restrained by lap/shoulder belts or with air bags, only minimal differences in test results were shown by the two types of dummies. The importance of equivalence is that vehicles, which will pass or fail Standard No. 208 using one type of dummy, will achieve essentially the same result using the other dummy.

The exception to the finding of equivalence occurred for chest acceleration measurements for unrestrained Hybrid III test dummies. The chest acceleration measurements for unrestrained Hybrid III dummies were consistently lower than the chest acceleration measurements for unrestrained Part 572 Subpart B dummies. If the two test dummies were to be equivalent, some additional measurement of injury producing forces to the chest of the Hybrid III test dummy

would have to be recorded to compensate for the lower chest acceleration measurements with this test dummy. Chest injuries generally are caused by excessive loading on the chest, when the chest contacts the restraint system and possibly the steering system, if the occupant is restrained, or the steering system or other passenger compartment components, if the occupant is unrestrained. The agency concluded that a measurement of chest deflection in testing with the Hybrid III test dummy would appropriately compensate for that dummy's lower chest acceleration measurements when it was unrestrained. Therefore, the July 1986 final rule specified a limit on the amount of thorax deflection that could occur with the Hybrid III test dummy, as the means of ensuring equivalence of the two types of test dummies. See 51 FR at 26693–26694.

Having determined that a thorax deflection limit was necessary to ensure equivalence of the two types of test dummies, the obvious question was what that limit should be. The agency began by examining biomedical data on thorax deflection. Excessive chest deflection can produce rib fractures which can impair breathing and inflict serious damage to the internal organs within the perimeter of the chest structure. The agency began by examining test results to compare the measured responses of Hybrid III test dummies and the injuries induced in cadavers under identical impact conditions. Injuries induced in the cadavers were rated on the Abbreviated Injury Scale (AIS). An AIS rating of 1 is a minor injury, while an AIS of 3 is a serious injury. The rated cadaver injuries were then compared with the chest deflection experienced by a Hybrid III test dummy under identical impact conditions.

In tests using a relatively stiff air bag, which was preinflated and not vented, the cadaver sustained an average injury level of AIS 1.5 (minor to moderate), while the Hybrid III test dummy experienced a 2.7 inch chest deflection under the same conditions. NHTSA concluded that these results demonstrated that a system that symmetrically and uniformly distributes impact loads over the entire chest can produce approximately three inches of chest deflection, as measured on the Hybrid III dummy, and still adequately protect an occupant from serious injury.

However, the testing with belt restraints that did not uniformly or symmetrically spread loads over the entire chest and with other protective systems where the impact loads were highly concentrated over a relatively small area suggested that chest deflection in other portions of the chest could be significantly greater than was shown by the centrally-mounted chest deflection gauge on the Hybrid III dummy. Accordingly, it appeared reasonable to establish a chest deflection limit of less than three inches to ensure that those restraint systems would provide a level of chest protection comparable to that provided by restraint systems that symmetrically spread the load over the entire chest surface. When evaluating lap/shoulder belts in a laboratory environment, the cadavers had moderate to serious injuries (AIS of 2.6) induced under the same conditions that the Hybrid III experienced chest deflection of 1.6 inches. Additionally, some pendulum test, were conducted for GM. In these tests, blunt, concentrated loads are intended to simulate unrestrained vehicle occupant impacts into the steering wheel or other interior components. This testing showed that the cadavers had serious chest injuries induced (average AIS of 2.8) under the same impact conditions in which the Hybrid III dummy measured 2.63 inches of chest deflection.

The available biomechanical data on this subject are based on a limited number of cadaver tests that are not large enough to make statistically significant injury projections. While the agency could not and did not rely on these limited biomechanical data *alone* to justify a decision to establish any particular limit for chest deflection, these data did suggest that a limit as low as 1.6 inches of chest deflection should be considered for the Hybrid III test dummy.

In addition to the indications from the biomechanical data that a chest deflection limit of less than three inches should be adopted for impact exposures that provide concentrated loadings over a limited area of the chest, the agency was also concerned that the Hybrid III test dummy could, in many instances, underestimate actual chest deflection. The Hybrid III measures chest deflection by a deflection sensor located near the third rib of the test dummy, on the midsternum of the dummy's chest. NHTSA testing has shown that the Hybrid III's deflection sensor underestimates chest displacement when a load is applied to an area away from the deflection sensor.

The agency recognized the limitations of the biomechanical data when it was considering what chest deflection limit should be established for restraint systems that can provide concentrated loadings over a limited area of the chest. Given these limitations, NHTSA examined the chest deflection levels that occur with current vehicle restraint systems. To do this, NHTSA examined the crash performance of existing restraint systems in available accident files, such as National Accident Sampling System (NASS) and Fatal Accident Reporting System (FARS). These data showed that existing 2- and 3-point safety belts, when used, offer vehicle occupants a high level of safety protection, including protection against the risk of serious chest injuries. Therefore, the agency determined that the chest deflection limit could safely be set at a level that was compatible with the level of chest deflection that would be experienced in 30 mph tests with existing 2- and 3-point belt designs.

Test data available to the agency at the time of the final rule indicated that the two inch limit could be satisfied by existing designs of 3-point manual belts, 2-point automatic belts, and 3-point manual belts with air bags. For instance, the data available of 3-point manual safety belts in 30 mph frontal impacts with the Hybrid III test dummy showed chest deflections ranging from an average of 0.67 inches in NHTSA car-to-car testing to 1.89 inches in GM sled testing. For the Volkswagen 2-point automatic belts, the data showed chest deflections ranging from 0.79 inches to 1.09 inches in NHTSA testing. Based on these data, the agency concluded that a two inch chest deflection limit was an achievable level for existing restraint system designs.

Thus, the decision to adopt a two inch chest deflection limit for restraint systems that did not generally distribute the load over the entire chest area was based on the following factors:

1. The limited biomechanical data that were available suggested that there was a safety need for a chest deflection limit at a level below three inches;

2. A chest deflection limit below three inches would compensate for the Hybrid III's tendency to underestimate chest deflection when a load is applied to a small area away from the deflection sensor; and

3. Existing 2- and 3-point belt systems could comply with a two inch chest deflection limit, based on the limited testing data available to the agency.

**Petitions for Reconsideration**

The agency received petitions for reconsideration of this final rule from nine different organizations. Many of the petitions for reconsideration raised

issues involving the positioning of the Hybrid III dummy during compliance testing. In its November 23, 1987 final rule establishing dynamic testing requirements for light trucks and light multipurpose passenger vehicles (MPV's) (52 FR 44898), NHTSA permitted the use of Hybrid III test dummies for compliance testing of those vehicle types. The dummy positioning issues that were raised in the petitions for reconsideration of the Hybrid III dummy had to be resolved in that rule, to allow the Hybrid III dummies to be properly positioned during compliance testing. Although that rule addressed only light trucks and MPV's, the positioning problems in those vehicle types are similar to the positioning problems for passenger cars. Accordingly, the dummy positioning procedures set forth therein are applicable to positioning the Hybrid III test dummy in any type of vehicle, including passenger cars. Persons interested in reviewing the agency's response to the Hybrid III test dummy positioning issues raised in the petitions for reconsideration should consult that document. This notice addresses all other issues raised in the petitions for reconsideration of the final rule establishing requirements for the Hybrid III test dummy.

**Chest Deflection Limits**

The chest deflection limits generated the most requests for reconsideration. Chrysler, Ford, GM, Honda, the Motor Vehicle Manufacturers Association (MVMA), Nissan, Renault, Toyota, Volkswagen, and Volvo all asked for some changes to these requirements. GM stated that it uses a two inch deflection limit as an internal design and performance guide in its development of belt restraint systems. However, GM stated that there is no biomedical basis for such a limit. GM concluded by stating that it believed a two inch chest deflection limit was overly conservative as a mandatory requirement and that a three inch limit would be a more appropriate regulatory requirement.

Toyota stated that the two inch limit was unreasonable. Toyota stated that it has no knowledge of any accidents in which occupants of a Cressida equipped with this automatic belt system have suffered serious chest injuries. Yet, according to this petitioner, in 30 miles per hour (mph) barrier impact tests using the Hybrid III test dummy, the 2-point automatic belt system installed in its Cressida model causes chest deflections that average 2.3 inches, with a maximum of 2.9 inches. Thus, these vehicles would not comply with the two inch chest deflection limit. Toyota asserted that retention of the two inch chest deflection limit would force it to discontinue offering this 2-point automatic belt system, even though accident data indicate that the system offers effective occupant protection. Toyota urged the agency to increase the chest deflection limit to three inches for all restraint systems. Volkswagen made a similar point with respect to the 2-point automatic belt system installed in its Golf models, as did Chrysler for the 2-point automatic belt systems installed in some of its models.

Volvo stated that the data on which NHTSA had based the two inch deflection limit were inadequate to provide conclusive evidence of biomechanical tolerance levels. Renault requested the agency to amend the chest deflection limit to 2.5 inches until the uncertainties associated with the test data, which were the basis for the two inch limit, are fully resolved. MVMA asked that the two inch limit be suspended until the agency had resolved the issues surrounding this aspect of occupant protection.

*Restrained Hybrid III dummies.* In response to these petitions, NHTSA has thoroughly reexamined this subject. The agency has no basis for questioning its previous statements that the Hybrid III can underestimate actual chest deflections in certain circumstances Further, after again reviewing the available biomechanical data, the agency continues to believe those data suggest the need to establish a chest deflection limit for restraint systems that do not evenly distribute the load over the entire thorax surface at some level below three inches.

If the biomechanical data were complete and reliable, the agency could rely on these data alone as the primary support for a particular chest deflection limit somewhere below three inches. However, the currently available biomechanical data are limited. NHTSA believes that it should not rely on these biomechanical data *alone* to support a particular chest deflection limit. Even when the agency's concern about the Hybrid III dummy's propensity to underestimate actual chest deflection in certain situations is combined with the available biomechanical data, the agency cannot demonstrate at this time that a two inch chest deflection limit is necessary to meet the need for safety

The most broad-based data source available for examination when establishing a new chest deflection limit is the accident files for the restraint systems currently in production. As noted above, those accident files show that current 2- and 3-point safety belts, when used, afford a high level of protection against serious thorax injuries. When the agency adopted the two inch chest deflection limit, the data available to the agency indicated that existing 2- and 3-point safety belt systems would not have to be redesigned to comply with this requirement. In the case of 2-point automatic belts, the available data consisted of 1982 and 1984 Volkswagen Rabbit tests. This testing showed chest deflections of 1.09 and 1.06 for the Hybrid III dummy at the driver's position, and chest deflections of 0.79 and 0.86 inches for the Hybrid III dummy at the passenger's position. Based on these test results, the agency had no reason to believe that existing 2-point automatic belt systems would have to be redesigned to comply with the two inch chest deflection limit.

However, manufacturers of vehicles with 2-point automatic belt systems submitted new test results as part of their petitions for reconsideration, showing that their existing belt systems do not comply with a two inch chest deflection limit. As not above, Toyota and Chrysler submitted test results showing that their models with 2-point automatic belt systems would not comply with a two inch chest deflection limit. Most significantly, Volkswagen submitted test data for its 1987 Golf model. This vehicle uses a very similar design of 2-point automatic belts to that which was present in the 1982 and 1984 Rabbit models that were tested by the agency. Volkswagen's testing of its 1987 Golf showed that the Hybrid III test dummies at both the driver and the passenger positions experienced chest defections of 2.3 inches. These chest deflections are significantly higher than those measured in the NHTSA testing. Both Volkswagen and MVMA alleged in their petitions for reconsideration that a scaling error may account for the large differences in test results for what is essentially the same restraint system. Both petitioners stated that the agency may have improperly converted centimeters to inches. Volkswagen showed that when the NHTSA results were multiplied by 2.54 (the number of centimeters in one inch), the NHTSA and Volkswagen data show very good agreement.

In response to these allegations, NHTSA has begun an investigation of its previous test results. The preliminary conclusion from that investigation is that the discrepancy between the NHTSA and Volkswagen test results cannot be definitely attributed to a data processing scaling error in the NHTSA

data. However, it concluded that those previous test results must be regarded as highly suspect.

Subsequent sled tests by NHTSA using Volkswagen Golf interiors produced chest deflections substantially greater than the results of the previous NHTSA crash testing of Volkswagen Rabbits. For example, this subsequent sled testing of a Golf showed a chest deflection of 2.8 inches for the current design of the Golf interior and restraint system. The agency then made several modifications to the Golf interior and restraint system to explore the sensitivity of the parameters that influence the magnitude of measured chest deflection. One of these modifications resulted in a chest deflection of 1.9 inches. However, this modification increased the HIC level to 2362. None of the chest deflections measured in these 11 tests of the Golf were near the level of 1.09 inches measured in the previous NHTSA testing of the Rabbit, and all but the one modification discussed above had chest deflections above two inches.

Additionally, the agency has also conducted several 30 mph frontal impact tests of vehicles equipped with 2-point automatic belts. The Chrysler LeBaron had a chest deflection of 2.35 inches at the driver's position and 2.56 inches at the passenger's position. The Subaru XT had a chest deflection of 2.48 inches at the driver's position and 2.61 inches at the passenger's position. The Toyota Camry had a chest deflection of 1.66 inches at the driver's position and 2.15 inches at the passenger's position. These results likewise are substantially greater than the chest deflection of 1.09 inches measured for the Volkswagen Rabbit in the agency's previous testing.

The subsequent testing by NHTSA and by the manufacturers has not been able to replicate the results of NHTSA's previous testing of 2-point automatic belts. To date, the agency has not been able to identify the source(s) of the discrepancies between current and previous test results. Accordingly, the agency believes that it cannot rely on the chest deflection measurements obtained in that previous round of testing for any purpose until such time as the agency can explain or replicate those results.

Data available to the agency indicate that most of the two point belt systems currently offered and some three point belt systems could not comply with the two inch chest deflection limit. Moreover, the accident data for vehicles equipped with restriant systems that do not comply with the two inch chest deflection limit do *not show* that persons restrained by these belt systems experience a higher level of chest injuries in crashes than those restrained by belt systems that comply with the two inch chest deflection limit. Given these accident data and the acknowledged limitations of the available biomechanical data, the agency has concluded that it does not have an adequate basis for imposing a two inch chest deflection limit at this time. Accordingly, this notice amends the chest deflection level upward.

The remaining question is what level should be established as the limit for permissible chest deflection. As noted above, agency sled tests have measured a 2.8 inch chest deflection for the Volkswagen Golf. NHTSA vehicle tests measured chest deflections of 2.56 inches in the Chrysler LeBaron and 2.61 inches in the Subaru XT. In one of Toyota's tests, a chest deflection of 2.9 inches was measured in its Cressida model. The agency currently has no field evidence that persons restrained by the restraint systems in these vehicles are exposed to an unacceptable risk of serious chest injuries. Therefore, this notice amends the chest deflection limit for Hybrid III test dummies to specify that the chest deflection shall not exceed three inches for any occupant protection system.

*Unrestrained Hybrid III dummies.* As noted above, the available accident data suggest that, when the impact forces that produce 2.9 inches of chest deflection in the Hybrid III test dummy are imposed on the human chest by 2-point belts, those forces appear not to expose vehicle occupants to a significant risk of serious chest injury. Similarly, NHTSA has test data showing that, when the forces that produce 2.7 inches of chest deflection in the Hybrid III test dummy are imposed on the human chest by air bags, those forces appear not to expose vehicle occupants to a significant risk of serious chest injury. Accordingly, the agency believes that a three inch chest deflection limit for the Hybrid III test dummy when restrained by safety belts or air bags appears to meet the need for motor vehicle safety.

In both the NPRM and the final rule adopting the Hybrid III test dummy, the agency treated all occupant protection systems other than those that were "gas inflated and provide distributed loading to the torso during a crash" as a single category. This treatment had the effect of establishing the same chest deflection limit for Hybrid III dummies that were restrained by safety belts and those that were unrestrained. Following this same reasoning, one would infer that since the three inches of chest deflection in the Hybrid III dummy can safely be tolerated by vehicle occupants when those forces are imposed by safety belts, that same level of chest deflection could be safely tolerated when it is imposed on unrestrained vehicle occupants.

However, the accident data and the limited biomechanical data that are currently available for unrestrained occupants raise concerns about the decision to assign the same chest deflection limit to unrestrained and belt-restrained occupants. To respond to these concerns, NHTSA believes that it should reexamine the basis for its decision to establish the same chest deflection limit for belt-restrained and unrestrained Hybrid III test dummies.

Moreover, the preamble to the final rule establishing the Hybrid III test dummy expressed the agency's concerns about the equivalence of the Hybrid III test dummy and the Part 572 Subpart B test dummy, relying solely on data gathered when both types of test dummies were *unrestrained.* The equivalence of the two test dummies is essential if the agency is to ensure that permitting a choice of test dummies will not lead to a degradation in vehicle safety performance. That is, both test dummies must reach similar conclusions in identifying vehicle designs that could cause or increase occupant injury. Based on a review of all available data comparing the test responses of the two dummies, the agency concluded that there was no consistent trend for either test dummy to measure higher or lower Head Injury Criterion (HIC) or femur measurements than the other. With respect to chest acceleration responses, however, the preamble explained the following:

> In the case of chest acceleration measurements, the data again do not show higher or lower measurements for either test dummy, except in the case of unrestrained tests. In unrestrained tests, the data show that the Hybrid III generally measures lower chest g's than the existing Part 572 test dummy. This difference in chest g's measurement is one reason why the agency is adopting the additional chest deflection measurement for the Hybrid III, as discussed further below. 51 FR 26688, at 26694; July 25, 1986.

Later, the preamble said:

> In summary, the test data indicate the chest accleration responses between the Hybrid III and the existing Part 572 test dummy are about the same for restrained occupants, but differ for some cases of unrestrained occupants. This is to be expected since a restraint system would tend to make the two dummies react similarly even though they have different seating postures. The different seating postures, however, would allow unrestrained dummies to impact different vehicle surfaces, which would in most instances produce different responses. Since the Hybrid III dummy is more human-like, it

should experience loading conditions that are more human-like than would the existing Part 572 test dummy. One reason that the agency is adding a chest deflection criteria for the Hybrid III is that the unrestrained dummy's chest may experience more severe impacts with vehicle structures than would be experienced in an automatic belt or air bag collision. Chest deflection provides an additional measurement of potential injury that may not be detected by the chest acceleration measurement. *Id.*, at 26694–95.

NHTSA's 1986 determination that the Hybrid III and the Part 572 Subpart B test dummies were nevertheless equivalent test devices for unrestrained occupants was based on the addition of a chest deflection limit for unrestrained Hybrid III test dummies. The chest deflection limit was established at two inches, based primarily upon data that had been gathered for *belt-restrained* occupants. However, today's notice has amended the chest deflection limit for Hybrid III test dummies to three inches, based in part on the inadequate support for the two inch value. Despite our acknowledgement of the limitations in the support for the two inch value, NHTSA is also concerned that none of the limited available data indicate that a three inch chest deflection limit for *unrestrained* Hybrid III test dummies is the correct value to make the Hybrid III test dummy equivalent to the Part 572 Subpart B test dummy.

Given the limitations of the available data to support any particular chest deflection value for unrestrained occupants and the concerns about the equivalence of the Hybrid III and Subpart B test dummies without a two inch chest deflection limit, the agency has concluded that it should not permit the Hybrid III dummy to be used until September 1, 1990 to test vehicles that do not use any restraint systems (such as automatic safety belts or air bags) to provide automatic occupant protection. This period of time will allow the agency to gather and analyze additional data, so that it can determine whether a chest deflection limit of less than three inches is necessary for unrestrained Hybrid III test dummies, and, if so, what specific limit should be proposed.

Furthermore, the agency has already determined that the injury criteria applicable to unrestrained Subpart B test dummies are reasonably correlated to the tolerance limits of unrestrained vehicle occupants. Accordingly, mandating the use of the Subpart B test dummy until September 1, 1990, for compliance testing of vehicles that do not use restraints to provide occupant protection will ensure that any such vehicles afford a level of occupant protection equivalent to that afforded by vehicles that use restraint systems.

The agency would like to make clear that the available data do *not* establish that the three inch chest deflection limit for unrestrained Hybrid III test dummies fails to meet the need for safety or fails to ensure equivalence with the Subpart B test dummy. To repeat, the agency has always treated unrestrained and belt-restrained Hybrid III dummies as a single category for the purposes of chest deflection throughout this rulemaking. If the agency were to continue following this course, there would be no reason for the temporary delay in the use of the Hybrid III for certain types of vehicles. However, the accident data and the limited biomechanical data that are available suggest that it would not be appropriate to continue to treat belt-restrained and unrestrained Hybrid III test dummies in a single category for purposes of the chest deflection limit. The agency wants to investigate this subject further, to ensure that the chest deflection limit that is established for unrestrained Hybrid III test dummies both meets the need for safety and ensures that these dummies are equivalent to the Subpart B test dummy in similar conditions.

If the agency cannot substantiate its concerns with data by the time this temporary delay in the use of the Hybrid III dummy for some vehicles expires, NHTSA will assume that it is reasonable to continue imposing a single chest deflection limit for belt-restrained and unrestrained Hybrid III dummies. Accordingly, *unless* there is some future rulemaking action in this area, this rule provides that vehicles that do not use any restraint systems to provide occupant protection and that are manufactured on or after September 1, 1990 *may* use the Hybrid III test dummy with the three inch chest deflection limit in Standard No. 208 compliance testing.

The agency is not aware of any manufacturer's plans to certify a vehicle design as complying with Standard No. 208 without including any automatic restraint system before September 1, 1990. Hence, this temporary delay in the use of the Hybrid III for testing vehicles without any automatic restraint systems should not adversely affect any manufacturer. After this temporary delay has expired, the Hybrid III dummy will be available for compliance testing for any type of occupant protection system a manufacturer may certify as complying with Standard No. 208. This reflects the agency's continuing belief that the Hybrid III test dummy should eventually replace the older Subpart B test dummy as the tool used to evaluate the protection that *all* vehicles afford occupants during frontal crashes, including vehicles that do not use any restraint systems to protect the occupants, because of the Hybrid III's enhanced biofidelity and capability of measuring injury producing forces for areas of the body that are not measured by the Subpart B test dummy.

**Mandatory Use Date for Hybrid III**

There are a number of questions that are currently unresolved regarding the injury criteria that should be established for the Hybrid III dummy. The following are some of the issues that need to be addressed to develop sound injury criteria for that test dummy:

1. What is the extent of the occupant chest injury problem in real world motor vehicle crashes? How does the problem vary by restraint system type?
2. Is chest deflection a relevant chest injury measure, in addition to chest acceleration, when using the Hybrid III test dummy?
3. What process should be used to correlate laboratory-based test data about chest injuries with the actual accident data for chest injuries?
4. How accurate and valid are the current chest deflection measurement technology and any current technological alternatives for assessing chest injury potential (such as measurements of shoulder belt loading)?
5. To what extent should the performance requirement limiting chest deflection differentiate among the varous types of restraint systems?
6. Are the responses of the Hybrid III test dummy adequately repeatable when used to measure the chest deflection of various types of restraint systems?

The available data are inadequate to permit the agency to resolve these questions with a reasonable degree of confidence. Until the agency has a reasonable confidence in its answers to these types of questions, NHTSA believes it would be premature to mandate the use of only this test dummy for compliance testing under Standard No. 208. Accordingly, this notice suspends the mandatory use date for the Hybrid III test dummy. The July 1986 final rule had established September 1, 1991 as the date after which NHTSA would use only the Hybrid III test dummy for its passenger car compliance testing under Standard No. 208.

NHTSA has already initiated further testing of current restraint systems with the Hybrid III test dummy. In addition, the agency intends to broaden its biomechanical data base to fill in the gaps in the existing data regarding the appropriateness of limits on permissible

chest deflection. NHTSA will also attempt to correlate the biomechanical data, Hybrid III chest deflections and/or related injury assessments, and injuries observed in vehicle crashes. Finally, the agency will gather more chest deflection and injury data from vehicle test crashes. After the agency has performed this additional research, it will propose a new mandatory use date for the Hybrid III dummy in Standard No. 208 compliance testing.

In connection with this suspension of the mandatory use date for the Hybrid III dummy in NHTSA's compliance testing, the agency emphasizes that it is aware of the need to allow all manufacturers to obtain and gain experience with using the Hybrid III dummy *before* that test dummy is used for passenger car compliance testing. NHTSA previously determined that at least four years should be allowed for manufacturers to gain experience with the Hybrid III, after those test dummies were commercially available in sufficient quantities; 51 FR 26688, at 26699, July 25, 1986. When proposing a new mandatory use date for the Hybrid III, NHTSA will again specify a leadtime that is adequate to allow all manufacturers to gain experience with the Hybrid III test dummy. Because of the problems that have arisen vis-a-vis chest deflection, NHTSA will not include the time that has elapsed since the July 25, 1986 final rule in its leadtime estimate.

**Other Issues Raised in Petitions for Reconsideration**

As noted above, all issues related to the Hybrid III positioning procedures that were raised in these petitions for reconsideration were addressed in the November 23, 1987 final rule establishing dynamic testing requirements for light trucks and light multipurpose passenger vehicles (52 FR 44898). Interested persons are referred to that rule if they wish to review the agency's response to those issues. Besides the issues of the appropriate chest deflection limits, the mandatory use date for the Hybrid III test dummy, and the positioning procedures, the following issues were raised in petitions for reconsideration.

*1. Acceptability of the Hybrid III's Design and Performance Specifications*

Ford commented that the performance requirements for Hybrid III test dummies that were specified in the final rule were based on versions of the Hybrid III that reflected the proposed requirements. However, the version of the Hybrid III mandated in the final rule includes new rib damping material, knee sliders, ball-joint ankles, and so forth. Ford asserted that the performance requirements in the final rule may not have taken these changes into account. In addition to the changes noted by Ford, the requirements for the Hybrid III dummy specified in the final rule differed from those proposed with respect to the calibration procedures to be followed.

Ford's assertion that the agency failed to account for the changes made to the test dummy between the proposal and the final rule is not correct. In the case of the new rib damping material, data submitted by GM (Docket No. 74–14–N–45–027) and testing conducted for NHTSA show that the new rib damping material shifts the impact force response calibration limits upward by about six percent, but has little or no effect on the chest deflection characteristics.

The design changes to the knee, lower leg, and ankle were made to reduce the dummy's design complexity which, in turn, should enhance the dummy's reproducibility. The size, mass, mass distribution, and rigidity of the knee, lower leg, and ankle are identical to those which were proposed. Additionally, NHTSA conducted its testing of the Hybrid III dummy's knees with the proposed knees, that is, *without* a shear module. GM conducted its testing of the dummy's knees with the knees adopted in the final rule, that is, *with* the shear module. The agency and GM test results for the knees were nearly identical. These test results show that the addition of the knee shear module did not significantly affect the performance of the knees in testing.

Ford did not offer any explanation of why it believes the changes to the knee, lower leg, and ankle would affect the performance of the Hybrid III dummy during testing. The dummy calibration modifications that were made between the proposal and the final rule simply reduced the complexity and redundancy of the calibration procedures. The available evidence indicates that the only effect on the performance of the Hybrid III as a result of the calibration modifications was to ensure that the test dummy produces more consistent impact responses. Accordingly, NHTSA has not amended the rule in response to Ford's concern.

*2. Calibration Requirements*

The calibration procedures involve a series of static and dynamic tests of the test dummy components to determine whether the responses of the dummy fall within specified ranges. These calibration procedures help ensure that the test dummy has been properly assembled and that the assembled test dummy will give repeatable and reproducible results during crash testing.

a. *Thorax calibration response requirements.* In its petition, Ford asked NHTSA to revise the thorax calibration specifications to reflect the characteristics of the rib cage structure with the new United McGill rib damping material. NHTSA changed to this new rib damping material after proposing to use a different rib damping material. Ford also indicated that it has experienced some intermittent difficulties in getting its Hybrid III dummies to comply with the thorax calibration requirements. Honda, Volkswagen, and Toyota also indicated they had experienced problems with getting Hybrid III dummies to meet the thorax calibration requirements. These three manufacturers also indicated that they had difficulties obtaining consistent thorax impact responses. GM urged the agency to revise the midpoint of the thorax resistive forces specified in the calibration requirements upwards by 47.5 pounds. GM stated that this increase would more appropriately reflect the range of acceptable responses for newly manufactured Hybrid III test dummies incorporating the new rib damping material.

The agency believes that these petitions raise a legitimate point. NHTSA confirmed in its own testing and testing conducted by the Hybrid III dummy manufacturers that the rib design specification set forth in the final rule is too broad. The dimensional extremes permissible under that specification result in the test dummy's thorax exhibiting excessive impact response variations. During the months of November and December 1986, a series of round robin test were conducted by the two dummy manufacturers and GM to determine what rib steel and damping material combinations would produce the most consistent impact responses, while ensuring biofidelity with the human rib cage. Those tests indicated that a rib steel thickness of 0.080 inches and 0.53 inch thickness of the new rib damping material would yield the most consistent responses and retain biofidelity (NHTSA Docket No. 74–14–N45–027). However, this report also concluded that the calibration force requirements should be adjusted upwards by 80 pounds.

Subsequently, the agency performed a similar series of tests of the rib cages made by both dummy manufacturers, to ensure that rib cages that comply with these new specifications could be calibrated within the higher force levels and that rib cages that comply with

these new specifications and that are calibrated at the higher force levels yield consistent impact responses. These tests showed that both dummy manufacturers can produce Hybrid III rib cages well within these new specifications and that both manufacturers' rib cages built to these new specifications gave repeatable and reproducible impact responses. (NHTSA Docket No. 74-14-N45-038).

Therefore, in response to the petitions and these test results, § 572.34(b) is revised to specify that the thorax shall resist a force of 1242.5±82.5 pounds. This is an increase of the midpoint force level by 80 pounds, or about six percent, over the previously specified level. The specifications for rib steel thickness have been narrowed from 0.078±0.002 inch to 0.080±0.001 inch. The specifications for rib damping material thickness are revised from a range of 0.250–0.625 inch to a range of 0.53±0.03 inch. These changes should ensure that the Hybrid III thorax will yield more consistent impact responses.

b. *Knee impact calibration responses.* Ford stated in its petition for reconsideration that the knee impact calibration should be conducted without the lower leg attached. In support of this request, Ford stated that it is hard to accurately measure the required angle specified for the lower leg, using the new lower leg. Additionally, Ford noted that § 572.35(c) requires the use of the new lower leg for knee impact testing, while Figure 24 shows the lower leg that was proposed, but not adopted in the final rule.

The agency was not persuaded by this argument. First, the agency has not encountered any problems in its testing with rotating the leg to the specified angle and maintaining it in the correct orientation. Ford did not explain what specific difficulties it has encountered. Second, removal of the lower leg would require the dummy to be disassembled during the calibration procedures. This would add time and effort to the calibration process with no corresponding benefit. Hence, this suggested change has not been adopted.

Additionally, Ford's suggestion that Figure 24 needs to be revised to show the version of the lower leg adopted in the final rule is not persuasive. The proposed lower leg included instrumentation on the tibia, while the final rule specified a non-instrumented tibia. There were no other differences in the lower leg. Figure 24 merely shows a lower leg, without identifying any particular lower leg by a part number or the like. The identification of the lower leg in § 572.35 correctly identifies the leg assembly with the non-instrumented tibia. Hence, no clarifying amendments are necessary.

Both Ford and GM stated that the knee impact calibration tolerances were overly broad in the final rule. That rule specified a tolerance of ±22 percent, with an acceptable variation of 44 percent (not less than 996 pounds nor more than 1566, with a midpoint of 1281 pounds). Ford stated that potential test variability would be significantly reduced if the range were narrowed to ±10 percent (not less than 1153 pounds nor more than 1409 pounds, with the midpoint remaining at 1281 pounds).

Based on a series of round robin tests between NHTSA and itself, GM also stated that the range of acceptable knee impact force requirements is too broad, expecially when compared with the typical knee impact responses of newly manufactured Hybrid III dummies. GM recommended, based on the round robin testing, that the calibration performance requirements be modified to be not less than 1060 pounds nor more than 1300 pounds. This would lower the midpoint of the acceptable range to 1180 pounds, and would fall within the ± 10 percent tolerance limit suggested by Ford.

After reconsidering this issue, NHTSA agrees with Ford and GM that the knee impact response range specified in the final rule is too broad. The knee response is governed primarily by the flesh covering the knee. It is relatively simple to control the consistency of this flesh when manufacturing new dummies, and relatively simple to replace the flesh on used dummies, when the response falls out of the acceptable calibration range. Based on the round robin testing, this notice adopts GM's suggested calibration range of 1060–1300 pounds. NHTSA and GM testing showed that this range is practicable and relatively simple to attain. This narrower range should also yield more repeatable impact responses from the Hybrid III dummies in crashes.

c. *Conforming Changes to the Drawings and Specifications Package for the Hybrid III Test Dummy.* As a part of the amendments to the calibration specifications and to correct errors in the previous package, NHTSA is making some changes to the drawings and specifications package for the Hybrid III test dummy. These changes consist of the following:

(i) A revised rib thickness specification;

(ii) A revised rib damping material specification;

(iii) A revised rib cage assembly specification (to reflect the changes in (i) and (ii));

(iv) A new abdominal insert specification (to eliminate possible interference by the insert with the lever arm of the chest deflection potentiometer);

(v) A new specification for the pelvis angle during thorax calibration tests; and

(vi) An update of the dummy assembly drawing to reflect these changes.

*3. Chest Temperature Sensitivity*

The final rule provided that the stabilized temperature of the Hybrid III test dummy is to be between 69 and 72 °F for the Standard No. 208 compliance testing. This narrow temperature range is necessary, because testing has shown that the Hybrid III test dummy's measurements of chest deflection and chest acceleration are temperature sensitive. The agency stated that it believed this temperature range was practicable.

Ford stated that its barrier crash facility cannot maintain the specified temperature range. However, Ford recommended that the temperature range could be broadened because "the new rib damping material will probably exhibit somewhat different temperature sensitivity." Based on this assumption, Ford suggested that the temperature range be broadened by 2 to 5 °F. As an alternative to broadening the temperature range, Ford suggested that this narrow temperature range be applied only to the dummy components that have shown great temperature sensitivity, and that the dummy components that do not exhibit temperature sensitivity should not be subject to tight temperature controls.

According to Mazda's petition for reconsideration, the specified temperature range can only be maintained with separate on-board air conditioning, and such an arrangement would limit the number and variety of tests that were possible. Like Ford, Mazda asserted that the reduced temperature sensitivity of the new rib damping material would permit the agency to expand the permissible temperature range, which Mazda suggested be set at 68 to 76 °F. Honda stated that its test facility could control the temperature within 8 °F and urged that the permissible temperature range be expanded to an 8 °F limit. Volvo stated that the permissible temperature range is practicable, but that it is excessively time consuming and complicated, especially because the test cycle has to be interrupted frequently for various technical reasons unrelated to temperature.

Contrary to the assertions by some of these petitioners, test data available in

the public docket (NHTSA Docket No. 74–14–N39–049) show that the new rib damping material has nearly the identical temperature sensitivity as the damping material it replaces. If the agency were to establish a broader temperature range for the testing, it would introduce excessive variability into the compliance test results. The preamble to the final rule discussed at length the several means that the agency and its contractors have used to maintain the temperature within the specified range (51 FR 26692). In addition, in a submission to the docket, General Motors indicated successful use of temperature normalization factors which a manufacturer may want to use to predict response values at the exact specified mean temperature. NHTSA has concluded that the specified temperature range is practicable and necessary to reduce variability of the test results, so this provision has not been changed in this notice.

*4. Dummy Durability*

Nissan stated that, in 35 mph sled tests, its Hybrid III test dummy had experienced damage to the neck, rib cage and wrists. Similarly, Volvo stated in its petition for reconsideration that the Hybrid III dummy is less durable in 35 mph impacts than the currently specified test dummy. Additionally, Volvo stated that the thorax needs more frequent replacement in 35 mph impacts than was stated by the agency. In the preamble to the final rule, the agency said that testing had shown that Hybrid III dummies could be used for about 17 crash tests before the ribs must be replaced, and concluded that this level of durability was reasonable. Volvo did not provide any data to support its assertions.

The agency has not examined the durability of the Hybrid III test dummy in 35 mph impact tests. However, the agency does not believe this issue is relevant to the announced use of the Hybrid III test dummy. The final rule specified that the Hybrid III dummy would be used in compliance testing for Standard No. 208, which requires 30 mph impacts. If and when the agency decides to use the Hybrid III dummy in testing for the New Car Assessment Program, which involves 35 mph frontal impacts, the agency will examine the durability of the dummy in 35 mph frontal impacts. Until such a decision is made, NHTSA believes that its resources can be better spent examining other issues related to the Hybrid III test dummy.

During extensive testing in 30 mph impacts conducted for NHTSA and manufacturers, the Hybrid III dummy has demonstrated adequate durability under those conditions (NHTSA Docket No. 74–14–GR–602). To the extent that the durability of the Hybrid III thorax may have been in question, agency testing has shown that Hybrid III test dummies with the new ribs and new rib damping material show minimal changes in force and deflection responses of the thorax after 20 consecutive pendulum impacts. After the 20th impact, the rib cage force and deflection response levels had changed less than 3 percent from the mean responses of the first four impacts. (NHTSA Docket No. 74–14–N45–038). Based on these test results, NHTSA concludes that the Hybrid III test dummy has adequate durability in 30 mph impacts.

*5. Changes to the Text of Standard No. 208 and Part 572*

Chrysler, Ford, and MVMA all requested the addition of text to sections S7.4.3–S7.4.5 to permit use of the Hybrid III test dummy to test compliance with the comfort and convenience requirements of S7.4. The final rule establishing dynamic testing requirements for light trucks and multipurpose passenger vehicles has already amended section S7.4.4 to permit the use of either type of test dummy for such testing. This notice makes similar changes to sections S7.4.3 and S7.4.5.

Renault asked that Standard No. 208 be clarified as to the question of whether the two dummy types may be used interchangeably in the driver and/or passenger positions. NHTSA has previously concluded that both dummy types yield equivalent safety assessments of vehicles. Therefore, until the time when only the Hybrid III test dummy is used for compliance testing, NHTSA believes manufacturers should be allowed to base their certifications of compliance on the use of either type of test dummy in any combination and in any of the designated seating positions. Language to this effect has been added to Standard No. 208.

Ford also suggested some technical changes to clarify certain parts of Standard No. 208 and Part 572. Ford stated that section S6.2.3 of Standard No. 208 currently provides that, "The resultant acceleration calculated from the thoracic instrumentation * * *" Ford stated that the acceleration is calculated from the output signal of the instrumentation, not from the instrumentation itself, and asked that the language be amended to state that. The agency agrees, and has made this change.

Ford stated that the positive and negative signs had been reversed in § 572.33 (b)(1)(ii) and (b)(2)(ii). This statement is incorrect. According to the sign convention for the output of the Hybrid III transducers referenced in § 572.31(a)(5) and sign conventions adopted by the Society for Automotive Engineers (SAE) Instrumentation Subcommittee, the positive and negative signs were correctly used in the sections questioned by Ford.

Ford also asked that the definition of and references to "time zero" be deleted from § 572.34(b), because the agency had deleted the proposed specifications that thorax load be measured 19 milliseconds after impact and that thorax displacement be measured 25 milliseconds after impact. Because of these deletions, Ford asserted that the references and definition of time zero were unnecessary and potentially misleading. NHTSA agrees with this point, and this rule has amended § 572.34 to delete the reference to "time zero."

**Impact Assessments**

1. *Economic and Other Impacts.* NHTSA has considered the impacts of this response to the petitions for reconsideration of the final rule on the Hybrid III test dummy and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The several technical corrections made by this notice should not significantly affect the cost estimates set forth in the final regulatory evaluation that was prepared in connection with the final rule on the Hybrid III test dummy. Interested persons are referred to that document, which is available in NHTSA Docket No. 74–14, Notice 45. Copies of that regulatory evaluation may be obtained by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–2992.

The most important changes made in this response to the petitions are the amendment of the chest deflection limit, the delay until September 1, 1990, in using the Hybrid III dummy for compliance testing of vehicles that don't use restraint systems to provide automatic occupant protection, and the suspension of the mandatory effective date for use of the Hybrid III dummy. The amendment of the chest deflection limit for the Hybrid III dummy is necessary to ensure that the adoption of a new compliance test device does not require the redesign of most existing designs of 2-point automatic belt systems. Amending the chest deflection

limit to three inches both recognizes the effectiveness of existing 2-point automatic belt systems and avoids unnecessary adverse impacts on any party.

The temporary delay in the use of the Hybrid III test dummy for compliance testing of vehicles that provide automatic occupant protection without using any restraint systems is necessary to allow the agency to further examine its decision to establish the same chest deflection limits for those systems and systems that use either safety belts or air bags. No manufacturer currently certifies any such vehicle design, nor is the agency aware of any plans to certify such a vehicle design before September 1, 1990. Hence, this temporary delay should not adversely affect any person.

The suspension of the effective date for mandatory use of the Hybrid III test dummy is necessary to permit the agency to resolve some remaining technical issues, principally related to chest deflection. The agency does not believe that postponing the mandatory use date for the Hybrid III test will have any adverse impacts on any person. Those manufacturers that wish to certify their vehicles on the basis of testing with the Hybrid III test dummy are permitted to do so. Those manufacturers that wish to certify their vehicles on the basis of testing with the Part 572 Subpart B dummy are also permitted to do so. Once the agency has resolved the outstanding technical issues associated with the Hybrid III test dummy, a new date for the mandatory use of that test dummy in NHTSA's compliance testing will be proposed through the rulemaking process. That rulemaking will consider all the impacts associated with a new mandatory use date.

2. *Regulatory Flexibility Act.* NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this response to the petitions for reconsideration will not have a significant economic impact on a substantial number of small entities. These changes will affect motor vehicle manufacturers, few of which are small entities. As described above, no adverse impacts will be associated with this action. Further, since no price increases will result from this action, small organizations and small governmental entities will not be affected by this action when they purchase new vehicles.

3. *Environmental Impacts.* NHTSA has analyzed this regulatory action for the purposes of the National Environmental Policy Act, and determined that this action will not have a significant impact on the quality of the human environment.

**List of Subjects**

*49 CFR Part 571*

Imports, Motor vehicle safety, Motor vehicles.

*49 CFR Part 572*

Motor vehicle safety.

In consideration of the foregoing, 49 CFR 571.208, *Occupant Crash Protection,* and 49 CFR part 572, *Anthropomorphic Test Dummies,* are amended as follows:

## PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.208 [Amended]**

2. S5 of Standard No. 208 is amended by revising S5.1 introductory text and S5.2.1 introductory text to read as follows:

S5. *Occupant crash protection requirements.*

S5.1 Vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1990 that comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt or inflatable restraint shall comply with S5.1(a).

* * * * *

S5.2 *Lateral moving barrier crash test.*

S5.2.1 Vehicles subject to S5.2 shall comply with either S5.2.1(a) or S5.2.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1990 that comply with the requirements of S4.1.2.1(c) by means not including any type of seat belt or inflatable restraint shall comply with S5.2.1(a).

* * * * *

3. S6.2 of Standard No. 208 is amended by revising S6.2.3 and S6.2.4 to read as follows:

S6.2 *Injury Criteria for the Part 572, Subpart E, Hybrid III Test Dummy.*

* * * * *

S6.2.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R incorporated by reference in Part 572, Subpart E of this chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.2.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing 78051–317, revision A incorporated by reference in Part 572, Subpart E of this chapter, shall not exceed 3 inches.

* * * * *

4. S7.4 of Standard No. 208 is amended by revising S7.4.3 and the first sentence of S7.4.5, to read as follows:

S7.4 *Seat belt comfort and convenience.*

* * * * *

S7.4.3 *Belt contact force.* Except for manual or automatic seat belt assemblies that incorporate a webbing tension-relieving device, the upper torso webbing of any seat belt assembly shall not exert more than 0.7 pounds of contact force when measured normal to and one inch from the chest of an anthropomorphic test dummy, positioned in accordance with either S10 or S11 of this standard in the seating position for which that seat belt assembly is provided, at the point where the centerline of the torso belt crosses the midsagittal line on the dummy's chest.

* * * * *

S7.4.5 *Retraction.* When tested under the conditions of S8.1.2 and S8.1.3, with anthropomorphic test dummies whose arms have been removed and which are positioned in accordance with either S10 or S11, or any combination thereof, in the front outboard designated seating positions and restrained by the belt systems for those positions, the torso and lap belt webbing of any of those seat belt systems shall automatically retract to a stowed position either when the adjacent vehicle door is in the open position and the seat belt latchplate is released, or, at the option of the manufacturer, when the latchplate is released. * * *

* * * * *

## PART 572—[AMENDED]

5. The authority citation for Part 572 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

6. Section 572.31 is amended by revising paragraphs (a)(1), (a)(3), and (b) to read as follows: ((a) introductory text is republished for the convenience of the reader)

**§ 572.31 General description.**

(a) The Hybrid III 50th percentile size dummy consists of components and assemblies specified in the Anthropomorphic Test Dummy drawing

and specifications package which consists of the following six items:

(1) The Anthropomorphic Test Dummy Parts List, dated December 15, 1987, and containing 13 pages, and a Parts List Index, dated December 15, 1987, containing 8 pages.

* * * * *

(3) A General Motors Drawing Package identified by GM Drawing No. 78051–218, revision R, and subordinate drawings.

* * * * *

(b) The dummy is made up of the following component assemblies:

| Drawing No. | Revision |
|---|---|
| 78051-61 head assembly—complete | (T) |
| 78051-90 neck assembly—complete | (A) |
| 78051-89 upper torso assembly—complete. | (K) |
| 78051-70 lower torso assembly—without pelvic. | |
| Instrumentation assembly, drawing No. 78051-59. | (D) |
| 86-5001-001 leg assembly—complete (LH). | (E) |
| 86-5001-002 leg assembly—complete (RH). | (E) |
| 78051-123 arm assembly—complete (LH). | (D) |
| 78051-124 arm assembly—complete (RH). | (D) |

* * * * *

7. Section 572.33 is amended by revising paragraph (b)(1)(i) to read as follows:

**§ 572.33 Neck.**

* * * * *

(b) * * *

(1) *Flexion.* (i) Plane D, referenced in Figure 20, shall rotate between 64 degrees and 78 degrees, which shall occur between 57 milliseconds (ms) and 64 ms from time zero. In first rebound, the rotation of Plane D shall cross 0 degrees between 113 ms and 128 ms.

* * * * *

8. Section 572.34 is amended by revising paragraphs (a), (b), and (c)(2) to read as follows:

**§ 572.34 Thorax.**

(a) The thorax consists of the upper torso assembly in drawing 78051–89, revision K and shall conform to each of the drawings subtended therein.

(b) When impacted by a test probe conforming to § 572.36(a) at 22 fps ± 0.40 fps in accordance with paragraph (c) of this section, the thorax of a complete dummy assembly (78051–218, revision R) with left and right shoes (78051–294 and –295) removed, shall resist with a force of 1242.5 pounds ± 82.5 pounds measured by the test probe and shall have a sternum displacement measured relative to spine of 2.68 inches ± 0.18 inches. The internal hysteresis in each impact shall be more than 69% but less than 85%. The force measured is the product of pendulum mass and deceleration.

(c) *Test procedure.* (1) * * *

(2) Seat the dummy without back and arm supports on a surface as shown in Figure 23, and set the angle of the pelvic bone at 13 degrees plus or minus 2 degrees, using the procedure described in S11.4.3.2 of Standard No. 208 (§ 571.208 of this chapter).

* * * * *

9. Section 572.35(b) is revised to read as follows:

**§ 572.35 Limbs.**

(a) * * *

(b) When each knee of the leg assemblies is impacted, in accordance with paragraph (c) of this section, at 6.9 ft/sec ±0.10 ft/sec by the pendulum defined in § 572.36(b), the peak knee impact force, which is a product of pendulum mass and acceleration, shall have a minimum value of not less than 1060 pounds and a maximum value of not more than 1300 pounds.

* * * * *

10. Section 572.36 is amended by revising paragraphs (b), (c), (d), (e), (f), and (h) to read as follows:

**§ 572.36 Test conditions and instrumentation.**

* * * * *

(b) Test probe used for the knee impact tests is a 3 inch diameter cylinder that weights 11 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.02 inches. The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis colinear to the longitudinal centerline of the cylinder.

(c) Head accelerometers shall have dimensions, response characteristics, and sensitive mass locations specified in drawing 78051–136, revision A or its equivalent and be mounted in the head as shown in drawing 78051–61, revision T, and in the assembly shown in drawing 78051–218, revision R.

(d) The neck transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing 83–5001–008 or its equivalent and be mounted for testing as shown in drawing 79051–63, revision W, and in the assembly shown in drawing 78051–218, revision R.

(e) The chest acclerometers shall have the dimensisons, response characteristics, and sensitive mass locations specified in drawing 78051–136, revision A or its equivalent and be mounted as shown with adaptor assembly 78051–116, revision D for assembly into 78051–218, revision R.

(f) The chest deflection transducer shall have the dimensions and response characteristics specified in drawing 78051–342, revision A or equivalent and be mounted in the chest deflection transducer assembly 78051–317, revision A for assembly into 78051–218, revision R.

* * * * *

(h) The femur load cell shall have th dimensions, response characteristics, and sensitive axis locations specified in drawing 78051–265 or its equivalent and be mounted in assemblies 78051–46 and –47 for assembly into 78051–218, revision R.

* * * * *

Issued on March 11, 1988.

**Diane K. Steed,**

*Administrator.*

[FR Doc. 88–5828 Filed 3–14–88; 4:06 pm]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 14

### Humane and Healthful Transport of Wild Mammals and Birds to the United States.

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; Supplement.

**SUMMARY:** On February 4, 1988, the Fish and Wildlife Service (Service) determined that it was necessary to delay the effective date of a final rule with regard to transport of wild animals from February 8, 1988, to August 1, 1988. This notice provides further information regarding the reasons for the Service's decision.

**FOR FURTHER INFORMATION CONTACT:** Mr. Marshall P. Jones, Acting Chief, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329, telephone (202) 343–3968.

**SUPPLEMENTARY INFORMATION:** On February 10, 1988, the Service published a rule (53 FR 3894) delaying the effective date of its previously-published final rule on humane and healthful transport of wild animals and birds to the United States (52 FR 43274). While the February 10 rule sought comments relating to the content of the rule and possible interpretation or amendment thereof, it did not seek comments relating to the decision to delay the effective date. The

Service wishes to clarify that it did not seek comments on the decision to delay the earlier final rule for good cause, as further explained herein. The decision not to seek comment was made for the following reasons:

(1) Comments received during January 1988, indicated substantial public confusion over implementation of the rule, and areas of potentially serious ambiguity. The Service's Law Enforcement division indicated its belief that, under these conditions, the rule could not be strictly enforced.

(2) These comments also indicated a risk that the confusion resulting from the final rules might actually result in harm or inhumane treatment to certain species.

(3) These comments indicated substantial reason to believe that certain sections might impose unnecessary hardship on the wildlife transportation and importation industries, or contained ambiguities which needed interpretation in order to comply. The Service received no comments specifically arguing that the final rule would impose a significant economic effect on a substantial number of small entities, as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, some comments did indicate that small businesses and organizations might have had unanticipated adverse effects if the rules were allowed to go into effect. Such hardships, if avoidable, are not the intent of the Service and would be contrary to the goals of the cited Act.

(4) The final rule had diverged in certain respects from the proposed rule, based on new information which had become available during the comment period. The Service had determined that these changes were not of sufficient magnitude to require a new proposed rule. The information and requests subsequently submitted to the Service, however, have provided some new information indicating there might be a need not originally foreseen for reopening the rules for additional comment.

(5) The approaching effective date left no time to seek comment on the advisability of delaying the rules. The indications of problems in those rules were received by the Service over a timespan from January 4 to January 27. The final rule's effective date would have been February 8, 1988. No time remained in which to seek comment.

(6) In light of these considerations, it appeared appropriate to seek remedy for these problems through reopening of the comment period for 30 days, to be immediately followed by a review and analysis of needs for clarification of ambiguous sections, and preparation of revisions to other sections if necessary. In any event, the Service judged that the final regulations could take effect by August 1, 1988. While this delay of six months is regrettable, it is in the Service's view a necessary course of action to use this period to ensure that all provisions of the regulations are necessary, enforceable, effective, and consistent with all applicable laws.

For all the above reasons, the Service has concluded good cause existed to give immediate effect to this action, and that notice and public comment procedures would have been, and remain impracticable and contrary to the public interest. As indicated in its February 10, 1988, notice, the Service will consider comments relating to interpretation and improvement of the November 10, 1988, rule received through March 11, 1988, with the intent of putting in place regulations with an effective date of August 1, 1988.

Dated: March 11, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88-5811 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 380

**[Docket No. 70998-7198]**

### Antarctic Marine Living Resources Convention Act of 1984

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce (Secretary) issues this final rule to implement the Antarctic Marine Living Resources Convention Act of 1984 (Act) which provides the legislative authority for United States implementation of the provisions of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The Convention establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources. Under the provisions of the Convention and the Act most of this rule is already in force with respect to U.S. citizens and nationals.

**EFFECTIVE DATE:** March 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robin Tuttle (International Science, Development and Polar Affairs 202-673-5302).

**SUPPLEMENTARY INFORMATION:** Concern regarding the conservation of Antarctic marine living resources expressed by the Consultative Parties at the Ninth Consultative Meeting of the Antarctic Treaty, in 1977, and the importance of the provisions of Recommendation IX-2 led to the establishment of the Convention on the Conservation of Antarctic Marine Living Resources in 1980. The Convention applies to Antarctic marine living resources (those finfish, mollusks, crustacea, and all other species of living organisms, including birds, found in the area south of the Antarctic Convergence [1]). The objective of the Convention is conservation of Antarctic marine living resources. Any harvesting and associated activities in the area covered by the Convention must be conducted within the following principles of conservation established by the Convention:

(a) Prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment (for this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment);

(b) Maintenance of the ecological relationships between harvested, dependent, and related populations of Antarctic marine living resources, and the restoration of depleted populations to the levels defined in (a) above; and

(c) Prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem, and the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.

The United States is a Contracting Party to the Convention, as well as a member of the Commission for the Conservation of Antarctic Marine Living Resources (Commission), established by the Convention. The function of the Commission is to give effect to the objective and principles of the Convention.

Article IX prescribes the procedures for the formulation, adoption and

[1] The latitude of the Antarctic Convergence varies at different points of longitude from 45° to 60° S. latitude.

revision of conservation measures by the Commission. After adoption of measures the Commission must notify all of its members of the adopted measures. Conservation measures become binding upon all Commission members 180 days after the notification, unless a Commission member notifies the Commission within 90-days following such notification that it is unable to accept the conservation measure in whole or in part.

By the terms of a memorandum of understanding between the Department of Commerce, the Department of State and the National Science Foundation, the Department of State will, effective with the 1987 meeting of the Commission, coordinate Federal and public review within the 90-day period of all future conservation measures adopted by the Commission. This will permit public participation, through response to **Federal Register** notices, in U.S. decisions on whether or not to accept and be bound by conservation measures.

On November 8, 1984, the President of the United States signed the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*, the Act). The Act provides the legislative authority necessary to implement the Convention with respect to the United States.

The Secretary, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States promulgates this rule to implement and publish certain requirements under the Convention and provisions of the Act. This rule establishes a new Part 380 in Title 50 of the Code of Federal Regulations. Subpart B of this new part contains the conservation measures adopted by the Commission at its September 1984, 1985, and 1986 meetings. The United States has agreed to these measures and is bound by Article IX of the Convention to implement them. Under the Convention and the Act, they are in force with respect to U.S. citizens and nationals. Subpart B also contains an incidental catch limit on the take of *Notothenia rossii* (marbled rockcod) around the Kerguilen Islands (Statistical subarea 58.5) which was strongly recommended by the Commission for conservation reasons. This is being implemented immediately without a opportunity for comment because of this recommendation. Subpart A of this new part contains a purpose-and-scope section and a definitions section which support Subpart B.

The balance of Subpart A is reserved for proposed gear and vessel identification, permit, recordkeeping and other requirements to give effect to these conservation measures and other provisions of the Act and the Convention. As is explained in an accompanying proposed rule, public comment will be considered prior to implementing them as a final rule. (See the notice of proposed rulemaking elsewhere in this part of today's **Federal Register**.)

The final rule, and the rule issued after analysis of comments on the proposed rule, will regulate the harvest of Antarctic marine living resources and other associated activities by a person subject to the jurisdiction of the United States, and the importation into the United States of any Antarctic marine living resource. The proposed rule would require any person who harvests, by reducing to possession or attempting to reduce to possession any Antarctic marine living resource, to obtain a permit from NMFS or to obtain a permit from the National Science Foundation (NSF) for such activity. It also would require that any importation of Antarctic marine living resources into the United States must be accompanied by either an NMFS harvesting permit, an NSF permit to harvest or import, or an NMFS import permit covering those resources. A person operating under an NMFS permit must submit an accurate and complete reporting form required by the permit. The proposed rule also includes requirements related to enforcement similar to those for other fisheries under Federal management.

In order to notify the public of convention measures in effect under the terms of the Convention and the Act, and to implement some of them more specifically, this final rule (1) identifies all waters within 12 miles of South Georgia Island as closed to any harvesting; and (2) specifies that the use of certain mesh sizes in pelagic and bottom trawls for several Antarctic finfishes in prohibited. The Commission adopted, and the United States accepted, conservation measures that prohibit directed fishing for *Notothenia rossii* in statistical subareas 48.1, 48.2 and 48.3, and that require that the by-catches of *N. rossii* in these areas be kept to the level allowing the optimum recruitment to the stock. NMFS is implementing this in § 380.22 by setting catch limits in those areas, that is by limiting to one percent of the catch (by weight) the amount of *N. rossii* that can be taken from those areas. The Commission recommended that consultative parties to the Commission adopt identical measures to govern fishing in statistical subarea 58.5. The United States is therefore setting a catch limit for statistical subarea 58.5. The management measures in Subpart B do not apply to scientific research.

The Commission is currently considering a system of observation and inspection as provided for in Article XXIV of the Convention. When the system is established (See 16 U.S.C. 2434 (b)), and appropriate provision will be added to Part 380.

## Classification

The Assistant Administator for Fisheries, NOAA (Assistant Administrator) prepared an environmental assessment (EA) for both this rule and the proposed rule under Executive Order 12114 and the Administrator concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Assistant Administator (See **ADDRESSES** section in the proposed rule for Part 380 published in this same issue of the **Federal Register**).

Under the terms of the Convention and the Act, the closed area of § 380.20, the mesh restrictions of § 380.21, and the catch restriction for subareas 48.1, 48.2 and 48.3 (found in § 380.22) are currently in effect. The Commission has recommended that the catch restriction of subarea 58.5 be implemented immediately to protect *Notothenia rossii* from over-exploitation. The Administrator therefore decided to implement that restriction, without an opportunity for public comment, by including it also in § 380.22. Furthermore, a statement of purpose and scope, and definitions of terms used in Subpart B (§§ 380.20–380.23) have been adopted now as §§ 380.1 and 380.2 of Subpart A. Because implementation of these measures is a foreign affairs function, section 553 of the Administrative Procedure Act does not apply.

Implementation of the remainder of this rule (§§ 380.3–380.11 of Subpart A) is also a foreign affairs function and therefore exempt from section 553 of the Administative Procedure Act. However, the Secretary has decided that this portion of the rule does not need to be implemented immediately and that the public should be provided the opportunity to comment on it. Therefore, the public is provided a 45-day comment period on the measures found in §§ 380.3–380.11 of Subpart A.

This action is exempt from Executive Order 12291 because it involves a foreign affairs function of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared.

At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under NSF permits. Accordingly, these regulations should not have an incremental economic impact of U.S. vessels harvesting or performing associated activities in the Convention area.

As the Commission for the Conservation of Antarctic Marine Living Resources adopts additional management measures which govern the harvesting of Antarctic marine living resources, and where such measures are considered for acceptance by the United States, there will be an opportunity to assess the economic impacts of each proposed measure.

The provisions of Part 380 put into immediate effect by this final rule contain no collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**List of Subjects in 50 CFR Part 380**

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: March 14, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, Chapter III of Title 50, Code of Federal Regulations, is amended by adding a new Subchapter D consisting of Part 380 to read as follows:

**SUBCHAPTER D—CONVENTION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES**

## PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

**Subpart A—General Provisions**

Sec.



**Authority:** 16 U.S.C. 2431 *et seq.*

### Subpart A—General Provisions

#### § 380.1 Purpose and scope.

(a) The purpose of this part is to conserve and protect the Antarctic marine living resources and to implement the Antarctic Marine Living Resources Convention Act of 1984.

(b) This part regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States,

(2) The harvesting of Antarctic marine living resources or other associated activity by any vessel of the United States, and

(3) The importation into the United States of any Antarctic marine living resource.

#### § 380.2 Definitions.

The terms used in this part have the following meanings:

*Act* means the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*).

*Antarctic Convergence* means a line joining the following points along the parallels of latitude and meridians of longitude:

| Latitude | Longitude |
|---|---|
| 50 °S | 0. |
| 50 °S | 30 °E. |
| 45 °S | 30 °E. |
| 45 °S | 80 °E. |
| 55 °S | 80 °E. |
| 55 °S | 150 °E. |
| 60 °S | 150 °E. |
| 60 °S | 50 °W. |
| 50 °S | 50 °W. |
| 50 °S | 0 |

*Antarctic finfishes* include the following:

| Scientific name | Common name. |
|---|---|
| *Notothenia gibberifrons* | Humped rockcod. |
| *Notothenia rossii* | Marbled rockcod. |
| *Notothenia squamifrons* | Grey rockcod. |
| *Dissostichus eleginoides* | Patagonian toothfish. |
| *Patagonothen brevicauda guntheri.* | Patagonian rockcod. |
| *Pleuragramma antarcticum.* | Antarctic silverfish. |
| *Trematomus spp* | Antarctic cods. |
| *Chaenocephalus aceratus.* | Blackfin icefish. |
| *Chaenodraco wilsoni* | Spiny icefish. |
| *Champsocephalus gunnari.* | Mackerel icefish. |
| *Chionodraco rastrospinosus.* | Ocellated icefish. |
| *Pseudochaenichthys georgianus.* | South Georgia icefish. |

*Antarctic marine living resources* means the populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence, and their parts or products.

*Assistant Administrator* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, DC 20235, or a designee. *Address:* National Marine Fisheries Service, Washington, DC 20235.

*Authorized officer* means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

*Commission* means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

*Convention* means the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980, and entered into force with respect to the United States on April 7, 1982.

*Convention waters* means all waters south of the Antarctic Convergence.

*Directed fishing* with respect to any species or stock of fish, means any fishing that results in such fish comprising more than one percent by weight, at any time, of the catch on board the vessel.

*Fish* means finfish, mollusks, and crustaceans.

*Fishing* means

(a) The catching or taking of fish;

(b) The attempted catching or taking of fish;

(c) Any other activity which can reasonably be expected to result in the catching or taking of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

*Harvest* means to engage in harvesting or other associated activities.

*Harvesting or other associated activities* means

(a) The harassing, molesting, harming, pursuing, hunting, shooting, wounding, killing, trapping, or capturing of Antarctic marine living resources;

(b) Attempting to engage in any activity set forth in paragraph (a) of this definition;

(c) Any other activity which can reasonably be expected to result in any activity described in paragraph (a); and

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

*Harvesting vessel* means any vessel of the United States (this includes any boat, ship, or other craft), which is used for, equipped to be used for, or of a type which is normally used for harvesting.

*IRCS* means International Radio Call Sign.

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing constitutes an importation within the meaning of the customs laws of the United States.

*Individual permit* means an NSF permit issued under 45 CFR Part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under 50 CFR 216.31; or an endangered species permit issued under 50 CFR 222.21.

*Land or landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

*NMFS* means National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

*NSF* means National Science Foundation.

*Person* means an individual, partnership, corporation, trust, association, or any other entity subject to the jurisdiction of the United States.

*Recreational fishing* means fishing with hook and line for personal use and not for sale.

*Scientific Committee* means the Scientific Committee for the Conservation of Antarctic Marine Living Resources established under Article XIV of the Convention.

*Scientific research activities* means any activity for which a person has a permit from NMFS under 50 CFR 216.31 or an award letter from NSF or a permit from the NSF under 45 CFR Part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

*Vessel of the United States* means

(a) A vessel documented under chapter 121, title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

(b) A vessel owned in whole or part by

(1) The United States or a territory, commonwealth, or possession of the United States;

(2) A State or political subdivision thereof;

(3) A citizen or national of the United States; or

(4) A corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

(c) A vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas.

*Vessel subject to the jurisdiction of the United States* includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the 1958 Convention on the High Seas.

**§ 380.3 Relationship to other treaties and laws. [Reserved]**

**§ 380.4 Harvesting permits. [Reserved]**

**§ 380.5 Import permits. [Reserved]**

**§ 380.6 Reporting and recordkeeping requirements. [Reserved]**

**§ 380.7 Vessel and gear identification. [Reserved]**

**§ 380.8 Facilitation of enforcement. [Reserved]**

**§ 380.9 Gear disposal. [Reserved]**

**§ 380.10 Prohibitions. [Reserved]**

**§ 380.11 Penalties. [Reserved]**

## Subpart B—Management Measures

**§ 380.20 Closed area.**

Fishing is prohibited in waters within 12 nautical miles of South Georgia.

**§ 380.21 Mesh size.**

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*—120 mm; and

(2) *Notothenia gibberifrons, N. kempi, N. squamifrons* and *Champsocephalus gunnari*—80 mm.

(b) Any means or device which would reduce the size or obstruct the opening of the meshes is not allowed.

(c) The following procedure will be used for assessing a mesh violation.

(1) Description of gauges.

(i) Gauges for determining mesh sizes will be 2 millimeters (mm) thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) Use of the gauge.

(i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) Selection of meshes to be measured.

(i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with paragraph (c)(2) of this section.

(5) Determination of the mesh size of the net will be the arithmetical mean in millimeters of the measurements of the total number of meshes selected and measured as provided for in paragraphs (c) (3) and (4) of this section, the arithmetical mean being rounded up to the next millimeter.

(6) Inspection procedure.

(i) One series of 20 meshes, selected in accordance with paragraph (c)(3) of this section, will be measured by inserting the gauge manually without using a weight or dynamometer. The mesh size of the net will then be determined in accordance with paragraph (c)(5) of this section. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with paragraph (c)(3) of this section will be measured. The mesh size will then be recalculated in accordance with paragraph (c)(5) of this section, taking into account the 60 meshes already measured; this recalculation will be the mesh size of the net.

(ii) If the captain of the vessel contests the mesh size determined in accordance with paragraph (c)(6)(i) of this section such measurement will not be considered for the determination of the mesh size and the net will be remeasured.

(A) A weight or dynamometer attached to the gauge will be used for remeasurement. The choice of weight or dynamometer is at the discretion of the inspectors. The weight will be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

(B) The accuracy of the weight or dynamometer must be certified by the appropriate national authority.

(C) For nets of a mesh size of 35 mm or less as determined in accordance with paragraph (c)(6)(i) of this section, a force of 19.61 newtons (equivalent to a mass of 2 kilograms) will be applied, and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kilograms).

(D) For the purposes of determining the mesh size in accordance with paragraph (c)(5) of this section, when using a weight or dynamometer, one series of 20 meshes only will be measured.

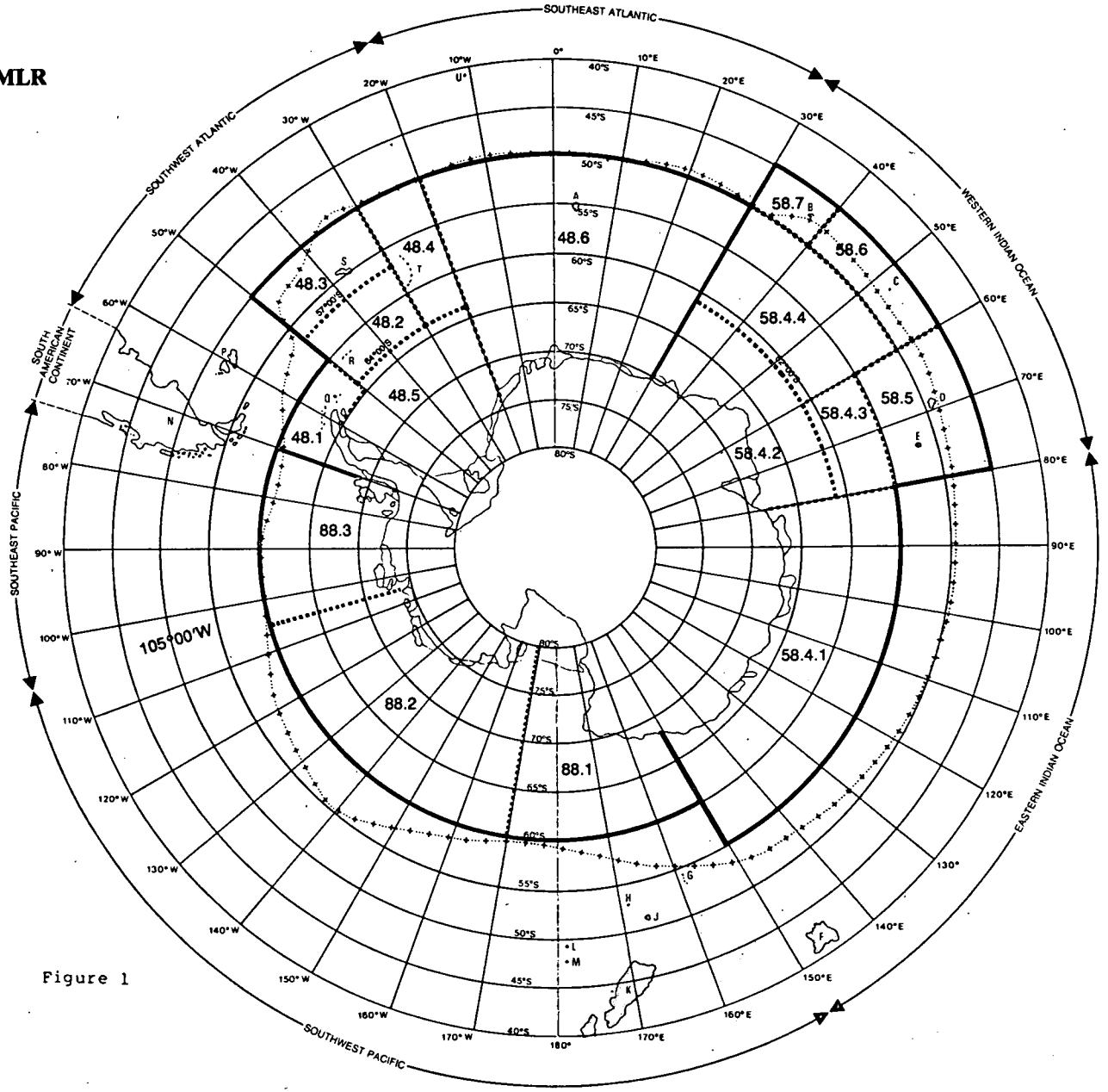
### § 380.22 Catch restrictions.

The catch limit for *N. rossii* is one percent of all Antarctic finfishes on board a vessel fishing in subareas 48.1, 48.2, 48.3, and 58.5 (see Figure 1).

BILLING CODE 3510-22-M

CCAMLR

Boundaries of the Statistical Reporting Areas in the Southern Ocean




LEGEND
- STATISTICAL AREA
- STATISTICAL SUBAREA
- ANTARCTIC CONVERGENCE
- CONTINENT, ISLAND

BILLING CODE 3510-22-C

Figure 1

LEGEND
- A Bouvet Island
- B Prince Edward and Marion Islands
- C Crozet Islands
- D Kerguelen Islands
- E McDonald and Heard Islands
- F Tasmania
- G Macquarie Islands
- H Campbell Island
- J Auckland Islands
- K South Island
- L Antipodes Islands
- M Bounty Islands
- N South America
- P Falkland Islands (Malvinas)
- Q South Shetland Islands
- R South Orkney Islands
- S South Georgia
- T South Sandwich Islands
- U Gough Island

**§ 380.23 Scientific research.**

These management measures do not apply to scientific research activities.

[FR Doc. 88-5895 Filed 3-15-88; 9:55 am]
BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 52
Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[LR-28-88]**

### Consolidated Return Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add new § 1.1502-32T to the consolidated return regulations. Section 1.1502-32T supplements the adjustment under § 1.1502-32(g) on the disposition by a member of stock of a subsidiary. The text of the new temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:**

#### Proposed Effective Dates

The final regulations under section 1502 are proposed to be effective for stock of a subsidiary that ceases to be a member of an affiliated group filing a consolidated return during a taxable year of the group ending after November 30, 1987. A member may elect to apply the new rules to stock not otherwise covered by such rules if the stock is disposed of in a taxable year ending after November 30, 1987.

#### Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by May 16, 1988.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-28-88], Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Judith C. Winkler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.1502-32T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR"). Final regulations are proposed to be based on the new temporary regulations. The final regulations generally would require a member of an affiliated group filing a consolidated return to reduce its basis in the stock of a disaffiliated subsidiary when the disaffiliated subsidiary distributes its earnings and profits. For the text of the new temporary regulations, see T.D. 8188 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the additions to the regulations.

#### Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Furthermore, the Secretary of the Treasury has certified that this rule, if issued, will not have a significant economic impact on a substantial number of small entities. The rule applies only to affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. It would not significantly alter the reporting or recordkeeping duties of small entities. A regulatory flexibility analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

#### Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

#### Drafting Information

The principal author of these proposed regulations is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 88-5908 Filed 3-14-88; 5:14 pm]

**BILLING CODE 4830-01-M**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 110

**[CGD11-88-01]**

### Anchorage Ground; San Francisco Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to amend Anchorage 7 in San Francisco Bay by moving the southeastern corner of the anchorage 230 yards to the north. The shifting of the boundary would prevent damage from anchoring vessels to an existing submarine power cable and a newly installed fiber optic telecommunications cable. This would reduce the southern reaches of the anchorage in the shallow waters off Treasure Island.

**DATES:** Comments must be received on or before May 2, 1988.

**ADDRESSES:** Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm. 701, 400 Oceangate, Long Beach, CA 90822. The comments and other materials references in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 701, 400 Oceangate, Long Beach, CA 90822. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone number: (213) 499-5410.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CCGD11-88-01] and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

### Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael Lodge, project officer, and Lieutenant Commander A.E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

### Discussion of Proposed Regulation

The Twelfth Coast Guard District, disestablished and combined with the Eleventh Coast Guard District on 1 July 1987 (FR 21 April 1987 pg. 13082), proposed changes to Anchorage number 7 (FR 9 April 1987 pg. 11512). No comments had been received. Action had not been taken on this proposal prior to the District change. The proposal under docket CGD12-87-02 is withdrawn. However, under the authority of the Commander, Eleventh Coast Guard District, it is again proposed for the reasons stated below.

Anchorage No. 7 primarily exists for the temporary anchorage of commercial vessels for up to 12 hours duration. After that the vessel would proceed to either a pier facility or an alternative anchorage ground. The anchorage presently has a submarine power cable transversing the southeastern corner. In addition, the Coast Guard has been advised that AT&T has laid a Fiber Optics cable across San Francisco Bay between Oakland and San Francisco alongside the existing power cable. To prevent the possibility of damage to those cables from the anchoring of vessels, the southern boundary of Anchorage No. 7 would be pivoted approximately 230 yards north along Treasure Island. This change would have minimal impact on vessel anchorage since the area eliminated is infrequently used due to its shallow depth.

### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will have minor impact because the small area being deleted is seldom used due to limited depth of water.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 110

Anchorage grounds.

### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33 Code of Federal Regulations as follows:

## PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224(e)(4) is revised to read as follows:

**§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.**

* * * * *

(e)(4) *Anchorage No. 7, Treasure Island.* In San Francisco Bay at Treasure Island bounded a line connecting the following coordinates:

| *Latitude* | *Longitude* |
|---|---|
| 37°49'36"N | 122°22'40"W; to |
| 37°50'00"N | 122°22'57"W; to |
| 37°50'00"N | 122°23'44"W; to |
| 37°49'22.5"N | 122°23'44"W; to |
| 37°48'40.5"N | 122°22'38"W; to |
| 37°49'00.0"N | 122°22'16"W; thence along the shore to |
| 37°49'36"N | 122°22'40"W. |

* * * * *

Dated: March 7, 1988.

**A. B. Beran,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 88-5886 Filed 3-16-88; 8:45 am]

**BILLING CODE 4910-14-M**

## 33 CFR Part 110

**[CGD1-87-085]**

## Special Anchorage Areas; Shelter Island, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to establish two special anchorage areas in the waters adjacent to the Town of Shelter Island, New York. This proposal is being considered because the town fathers requested that these areas be so designated to provide safe anchorages well away from fairways where vessels less than 65 feet in length could safely remain unlighted at night. There are no such anchorages currently available in the immediate area. This area sustains a large number of pleasure boats during the summer months.

**DATES:** Comments must be received on or before May 2, 1988.

**ADDRESSES:** Comments should be mailed to Captain of the Port, Bldg. 109, Governors Island, NY 10004, Attention to: Vessel Movement Office. The comments and other materials referenced in this notice will be available for inspection and copying at the Vessel Movement Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8:00 A.M. and 4:30 P.M., Monday through Friday, except holidays. Comments may also be hand delivered to that address. Persons wishing to visit the Vessel Movement Office must make an appointment so that clearance onto Governors Island (a military installation) can be arranged.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) A.J. DiNinno, Vessel Movement Officer, Captain of the Port, New York at (212) 668-7933.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1-87-085) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this notice are LTJG A.J. DiNinno, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

The two areas proposed for designation as special anchorages are located in the waters contiguous to Shelter Island. The northern area is located in that portion of Cedar Island Cove which is enclosed by a line drawn between Sungic Point and latitude 41° 04' 09" North, longitude 72° 17' 55" West in Coecles Harbor, Shelter Island, New York. The southern area is located in that portion of West Neck Harbor which is enclosed by a line drawn between latitude 41° 02' 48" North, longitude 72° 20' 28" West and a point on Shell Beach located at latitude 41° 02' 29" North, longitude 72° 21' 00" West. The Captain of the Port, New York was contacted by Councilmen Rowland V. Clark and Kenneth L. Lewis of the Town of Shelter Island Waterways Committee regarding the establishment of two special anchorage areas which would provide safe well defined anchorages for visiting recreational boaters. The town has indicated that it will administer these special anchorage areas. At the request of the Captain of the Port, New York, Councilman Lewis contacted the New York State Department of Environmental Conservation regarding this project. That office responded affirmatively to the special anchorage proposal. This rule would allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The two areas will not effect navigable channels and are located where general navigation will not endanger or be endangered by unlighted vessels. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

**Environment Impact**

These proposed regulations do not alter the use of these areas in any way. They have been and will continue to be places for vessels to anchor.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of these proposed special anchorage areas will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Lists of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

## PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, two new paragraphs (y) and (y-1) are added to read as follows:

**§ 110.60 Port of New York and vicinity.**

* * * * *

(y) *Coecles Harbor at Shelter Island, New York.* That portion of Coecles Harbor bounded on the north by a line drawn between the northernmost point of land at Sungic Point and latitude 41° 04' 09" North, longitude 72° 17' 55" West, thence eastward along the shoreline to the point of origin.

(y-1) *West Neck Harbor at Shelter Island, New York.* That portion of West Neck Harbor bounded on the north by a line between latitude 41° 02' 48" North, longitude 72° 20' 28" West and a point on Shell Beach located at latitude 41° 02' 29" North, longitude 72° 21' 00" West; thence eastward along the shoreline to the point of origin.

Dated: March 4, 1988.

**R. L. Johanson,**

*Rear Admiral, United States Coast Guard Commander, First Coast Guard District.*

[FR Doc. 88-5887 Filed 3-16-88; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL MARITIME COMMISSION

**46 CFR Part 581**

**[Docket No. 88-7]**

## Service Contracts; "Most-Favored-Shipper" Provisions

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes to amend its service contract regulations to prohibit the use of contract clauses that affect the rate charged under a service contract by referencing rates offered or published by other carriers or conferences, whether in their service contracts or their tariffs. However, contract clauses that adjust a service contract rate by referencing a rate in the contract carrier's or conference's own tariffs or service contracts would continue to be permitted.

**DATE:** Comments due on or before May 2, 1988.

**ADDRESS:** Comments (original and 15 copies) to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:**

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202 523-5796.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The International Council of Containership Operators ("ICCO") has filed a Petition for Rulemaking ("Petition") pursuant to Rule 51 of the Commission's Rules of Practice and

Procedure, 46 CFR 502.51.[1] The Petition requests that the Commission promulgate a rule prohibiting (1) the inclusion in service contracts subject to the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1701–1720, of so-called "most-favored-shipper" clauses, and (2) *de minimis* liquidated damages provisions. ICCO also requests that all existing contracts containing such provisions be declared "null and void."

The Petition was published in the **Federal Register** and interested persons were invited to comment. The Commission received 41 separate comments representing 56 parties. These comments divide into two groups: Carriers, conferences and carrier associations which support the Petition;[2] and shippers, shippers' associations and the Department of Justice ("DOJ") which oppose the Petition.[3] Comments were also submitted by three members of Congress.[4]

## II. Summary of the Petition

ICCO alleges that experience with service contracts under the Shipping Act of 1984 reveals an imbalance between the interests of shippers and carriers that is contrary to the intent of Congress. The widespread use of so-called "most-favored-shipper" clauses and *de minimis* liquidated damages provisions in contracts is said to reflect a lack of mutuality of consideration and illusory cargo commitments. ICCO has proposed that the Commission adopt regulations which would prohibit the use of such provisions in service contracts.

ICCO defines a "most-favored-shipper" clause as being any form of service contract provision where the rate charged is contingent upon other rates for the same commodity charged by that or other carriers. ICCO identifies two primary types of such clauses. The first is where the contracting carrier agrees that the rate charged to the shipper will be the same as that the contracting carrier offers to any other shipper of the same commodity. The second, referred to by ICCO as the "Crazy Eddie" clause, is where the carrier agrees that the rate charged to the shipper will be the same rate that either that carrier, or any other carrier, offers by tariffs, service contract, or otherwise, to the shipper, or any other shipper, for that commodity.

ICCO submits that "most-favored-shipper" clauses are contrary to the requirement of the 1984 Act that a service contract provide for a certain rate or rate schedule. Additionally, ICCO argues that "Crazy Eddie" clauses are contrary to the Act's requirement that a carrier not charge rates other than those set forth in *its* tariffs or service contracts.

ICCO also contends that service contracts with *de minimis* liquidated damages provisions do not meet the definition of service contracts contained in the 1984 Act and should be prohibited. It maintains that a service contract must include a commitment by the shipper which allows a carrier to count on predictable revenues. However, *de minimis* liquidated damages clauses are alleged to be nothing more than written verification of the lack of a true shipper commitment. ICCO would, therefore, have the Commission prohibit any liquidated damages provision which is an amount less than seventy-five percent of the rate which would have been applied to that cargo had it been tendered and carried.

ICCO concludes that "most-favored-shipper" clauses and *de minimis* liquidated damages clauses in service contracts have had a destabilizing effect on ocean common carriage in the U.S. foreign commerce and are contrary to the requirements of the 1984 Act. ICCO further submits that the Commission has authority to promulgate rules to prohibit such clauses to ensure that service contracts comply with the requirements of the 1984 Act.

## III. Summary of Comments

In light of the number of filings and the fact that many of the comments make the same points, the arguments of each commenter will not be individually summarized. Instead, the major comments will be presented in two broad categories—those generally supporting the Petition and those generally opposed to it.

Those carrier, conference and carrier association parties commenting in support of the Petition agree with the factual allegations and legal analysis set forth in the Petition. They maintain that the viability and integrity of service contracts are at issue and claim that if service contracts are to have any meaning, they must fulfill the traditional role of a contract—*i.e.*, be an agreement freely entered into by parties of essentially equal bargaining power who intend and expect to be bound by the contract. These supporting parties also contend that, because the industry is and will continue to be plagued by extensive overcapacity, it is unlikely that the relative bargaining power of the parties will come into balance. As a result, service contracts have allegedly become shams because big shippers, as a result of the leverage they command, dictate terms that make the contracts virtually meaningless. The types of

[1] The following were members of ICCO at the time the Petition was filed: American President Lines, Ltd.; Atlantic Container Line Service Ltd.; The Australian National Line; Ben Line Containers Ltd.; Blue Star Line Ltd.; Compagnie General Maritime, CMB S.A.; Crowley Maritime Corporation; The East Asiatic Company Ltd. A/S; Evergreen International Corporation; Societa Finanziari Marittima (Finmare); Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck; Hapag-Lloyd AG; Lykes Bros. Stemship Co., Inc.; A.P. Moller (Maersk Line); Mitsui O.S.K. Lines, Ltd.; Koninklijke Nedlloyd Groep N.V.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Overseas Containers Limited; Sea-Land Service, Inc.; South African Marine Corporation, Limited; Transatlantic Shipping Company, Limited; Trans Freight Lines, Inc.; Transportation Maritima Mexicana, S.A. de C.V.; United Arab Shipping Company (S.A.G.); United States Lines, Inc.; and Wilh. Wilhelmsen.

[2] Comments supporting the Petition were received from: Maritime Institute for Research and Industrial Development; Johnson Scanstar; Safmarine; Transpacific Westbond Rate Agreement and West Coast/Middle East/West Asia Rate Agreement (joint comment); United Arab Shipping Company; Blue Star Line, Ltd.; Transportation Institute; Associated Container Transportation (Australia) Ltd.; AFL–CIO Maritime Committee; Pacific Coast European Conference and the North Europe-U.S. Pacific Freight Conference (joint comment); Asia North America Eastbound Rate Agreement, the U.S. Atlantic & Gulf/Australia-New Zealand Conference; the American West African Freight Conference, and the "8900" Lines (joint comment); Seafarers International Union of North America, AFL–CIO; Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference (joint comment); Council of European & Japanese National Shipowners' Associations; Nippon Yusen Kaisha; American President Lines, Ltd.; Council of American-Flag Ship Operators; Labor Management Maritime Committee, Inc.; Mitsui O.S.K. Lines, Ltd.; Sea-land Service, Inc.; Atlantic and Gulf/West Coast of South American Conference, United States Colombia Conference, United States Atlantic and Gulf/Ecuador Freight Association, United States Atlantic and Gulf/Hispaniola Steamship Freight Association, United States Atlantic and Gulf/Hispaniola Steamship Freight Association, United States Atlantic and Gulf/Southeastern Caribbean Conference, and the Central America Liner Association (joint comment); U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference, Gulf-European Freight Association, and North Europe-U.S. Gulf Freight Association (joint comment); EAC Lines Trans-Pacific Service; and California Shipping Lines, Inc.

[3] In addition to DOJ, comments opposing the Petition were received from: National Industrial Transportation League; American Institute for Shippers' Associations, Inc.; General Electric Company; Digital Equipment Corporation; California Shipping Line, Inc.; International Shippers Association; Chemical Manufacturers Association; Ford Motor Company; Wine and Spirits Shippers Association; E.I. DuPont de Nemours and Company; PPG Industries, Inc.; Phillips Petroleum Company; General Foods Corporation; IBP, Inc.; and the International Association of NVOCCs.

[4] Congressional comments were received from: the Honorable Walter B. Jones, Chairman, House Committee on Merchant Marine and Fisheries; the Honorable Daniel K. Inouye and the Honorable Ted Stevens, then Ranking Majority and Minority members of the Senate Subcommittee on Merchant Marine (joint comment).

contracts that are the subject of the Petition are said to indicate how illusory some of these contracts have become.[5]

These parties further contend that the effects of "most-favored-shipper" provisions demonstrate the absence of mutuality in these contracts. A contract which gives a shipper a contract rate, usually below the tariff rate, with a promise that the rate will be further reduced if the market goes down, is argued to be fundamentally at odds with rate stability, rate equity, survival of carriers as competitors, and avoidance of rates that do not cover carriers' costs. Moreover, when "most-favored-shipper" clauses are coupled with damages provisions so minimal as to permit the shipper not to perform what is usually a minimal cargo commitment, any resemblance to a true, long-term contract if affreightment at fixed rates allegedly disappears.

These commenters argue that if the present chaotic environment continues, a major restructuring of carriers through merger, consolidation, or outright business failures will result. A further consequence will allegedly be a significant reduction in competition, through the reduction of competitors, and a concomitant concentration of economic power.

Carriers supporting the Petition also contend that the minimum standards set by the Commission for service contracts tend to determine how contracts are in fact written by many carriers, even against their better judgment. This creates pressure on other carriers to adopt similar service contracts which may lack mutuality and which could destroy the tariff structure and stability in a trade. Unless the Commission adopts standards to address "most-favored-shipper" clauses and the absence of real liquidated damages, the marketplace will allegedly produce results which conflict with the objectives of the 1984 Act.

The Honorable Daniel K. Inouye, then Ranking Majority Member and the honorable Ted Stevens, then Ranking Minority Member of the Subcommittee on Merchant Marine, U.S. Senate, Committee on Commerce, Science, and Transportation, express their concern that service contracts may be being used to circumvent the tariff filing requirements for ocean common carriers that the 1984 Act reaffirmed. They believe that if that is the case, two fundamental objectives of the 1984 Act—non-discriminatory treatment of shippers and rate stability—could be undermined. They further contend that service contracts were intended to provide greater rate stability by permitting shippers and carriers to make mutually binding, substantial commitments. Similarly, Congressman Walter B. Jones, Chairman, House Merchant Marine and Fisheries Committee, contends that a particular concern of that Committee is the maintenance of common carriage. He further expresses concern that the provision allowing service contracts should not be used to frustrate the original purpose of the Act—liner regulation.

Those opposed to the Petition are generally shippers and shippers' associations, but also include DOJ. DOJ contends that there is no need for regulation in the areas of liquidated damages and service commitments. It believes that carriers and shippers are freely entering into service contracts and would not do so unless it benefits each of them. Moreover, it contends that there is no provision in the 1984 Act that gives the Commission the authority to impose minimum levels for cargo and service commitments or for liquidated damages. DOJ notes that Congress did not require that liquidated damages be imposed. The "if any" language in the Act is said to indicate that Congress contemplated that there could be situations where a service contract would not include any liquidated damages for nonperformance.

DOJ also argues that it would be extremely difficult to set efficient minimum levels for liquidated damages, because liquidated damages should reflect the actual costs to the parties for breach of a service contract, and such costs would depend on the particular facts involved. It is possible that the optimal level of liquidated damages could, in certain cases, be *de minimis*. In any event, DOJ argues that carriers and shippers have the best knowledge of what their respective losses would be in the event of a breach, and thus, have the best basis on which to negotiate liquidated damages provisions.

Large volume shippers that utilize service contracts submitted their views on the underlying industry conditions that concern the carriers and conferences. They contend that the marketplace should set the tone and scope of contract pricing and terms, not a regulatory body. They further submit that pricing and contracting are dynamic, especially in an industry historically subject to wide fluctuation in pricing. In addition, they argue that carriers made shippers seek "most-favored-shipper" clauses because of the carriers' "rate-of-the-day" approach to contract pricing. Moreover, the types of clauses challenged by the Petition are said to be so common and characteristic of modern commercial contracts that there can be no doubt that such clauses do not render the obligation imposed by a contract wholly illusory in the eyes of the law.

These parties opposing the Petition also note that contract disputes must, under the 1984 Act, be resolved in the courts, not before the Commission. They therefore contend that the Commission should not be forced into setting languaghe which it cannot adjudicate and which would only serve to satisfy one party—the carriers. They further suggest that there is available under the existing law a far less involved solution to the problems cited in the Petition, *i.e.*, liner operations could resolve their contractual differences through negotiation with their customers.

Moreover, these shipper commenters claim that shippers need the flexibility afforded them by the complained of clauses to meet their competitive pressures. Properly designed clauses that are utilized by ethical companies allegedly enhance and preserve business opportunities and markets for both the carrier and the shipper. The effective removal of service contracts, as a result of the adoption of the proposed rules, might upset the commercial balance contained in the 1984 Act and frustrate the Congressional intent of the statute.

Lastly, some shippers' association commenters opposing the Petition contend that "most-favored-shipper" clauses do provide a mutuality of obligation, because mutuality of obligation does not require a fixed dollar value of revenue to the contracting carrier. They also argue that the legislative history of the 1984 Act contemplates "most-favored-shipper" clauses. In requiring carriers to offer essential terms to all similarly-situated shippers, Congress allegedly contemplated the use of "most-favored-shipper" clauses, and in some circumstances, service contracts do not need to state price terms.

The parties opposed to the Petition therefore suggest that the Petition be denied and that the Commission not propose any rules that might limit the flexibility of service contracts.

[5] Some commenters further believe that service contracts have become devices for special discounts from tariff rates to secure relatively small quantities of cargo. To this extent, they allegedly serve the same purposes and have the same deleterious effects as a prohibited rebate and do not provide the kinds of mutual, long-term obligations which transportation contracts should have to serve objectives other than one-shipper discounts.

## IV. Discussion

### A. Introduction

So-called "most-favored-shipper" clauses are provisions in service contracts which permit the rate to be changed if other, non-contract shippers are able to obtain transportation under better rates during the life of the contract. According to ICCO, these provisions generally fall into one of two distinct categories:

> Under the first if, during the term of the contract, the contract carrier (or conference) offers to any other shipper (by service contract or by tariff), a lower rate for that commodity for that service than is offered to the contract shipper under the service contract, the contract shipper will prospectively receive that lower rate.
>
> The second type of clause has been referred to as a "Crazy Eddie" clause * * *. Under a Crazy Eddie clause if, during the contract term, the contract carrier or *any other carrier* offers the contract shipper *or any other shipper* (by service contract or by tariff), a lower rate for that commodity for that service than is offered to the contract shipper under the service contract, the contract shipper will prospectively receive that lower rate.

ICCO Petition, at 8–9 (emphasis in original).

Liquidated damages clauses are provisions in contracts by which the parties set an amount to be paid an injured party in the event the contract is breached. In the area of service contracts, liquidated damages are most often provided for the breach which occurs when a shipper fails to meet its minimum cargo commitment.

The Petition requests a proposed rule which would prohibit both forms of "most-favored-shipper" clauses, while severely limiting cross-referencing to rates and charges not stated in a service contract.[6] The Petition also requests that the Commission prohibit service contracts which include a provision establishing liquidated damages for contract breach in an amount which is *de minimis.*[7] As noted above, ICCO believes that *de minimis* liquidated damages should be deemed to be an amount less than 75 percent of the contract rate.

The fundamental legal issue that must first be considered in addressing the Petition is whether the Commission has the statutory authority to regulate service contracts and establish substantive service contract standards. ICCO argues that the Commission has such authority. Many commenters disagree and argue that service contracts are private commercial arrangements and, although the Commission may establish "form and manner" standards relating to the filing and publication of service contracts, it has no authority to regulate the substance of contract terms.

In order to determine the scope of the Commission's authority to impose substantive service contract terms or standards, particularly those advanced by ICCO, it would be useful to review the Commission's rulemaking authority as it relates to service contract regulation.

### B. General Rulemaking Authority

The source of the Commission's general rulemaking authority is contained in section 17(a) of the Shipping Act of 1984, 46 U.S.C. app. 1716(a), which provides:

> The Commission may prescribe rules and regulations as necessary to carry out this Act.

This provision is a recodification of the rulemaking authority contained in former seciton 43 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 841a, and can be presumed to incorporate the administrative and judicial interpretations given the prior provision. *Lorillard v. Pons*, 434 U.S. 575, 580–81 (1978).

Originally, the 1916 Act did not contain general rulemaking authority. This power was granted to the Commission by the 1961 amendments to the 1916 Act. Pub. L. 87–346, 75 Stat. 762. The legislative history of section 43 indicates that the authority conferred on the Commission is very broad. S. Rep. No. 860, 87th Cong., 1st Sess. 20, *reprinted in* 1961 U.S. Code Cong. & Ad. News 3108, 3126. Congress intended that he statute confer far-reaching rulemaking authority to enable the Commission to give precision to the general statutory standards. *Pacific Coast European Conference v. FMC*, 376 F.2d 785 (D.C. Cir. 1967). The statute imposes no specific limits on the Commission's rulemaking authority and the only general limits are that regulations must further the statute's requirements and impose no unequal burden on U.S.-flag carriers vis-a-vis their foreign competitors. *Alcoa S.S. Co. v. FMC*, 348 F.2d 756 (D.C. Cir. 1965).

The Commission is not limited to adopting rules that remedy specific proven acts of unlawful conduct, but may impose rules "reasonably adapted to the accomplishment of a Congressional objective" supported by reasonable inferences of illegal conduct derived from the language and acknowledged use of shipping documents. *See Outward Continental Conference v. FMC*, 385 F.2d 981 (D.C. Cir. 1967). Likewise, the Commission's rulemaking authority is applicable to all sections of the statute and, most importantly permits the precise definition of statutory standards that would otherwise arise by adjudication, so long as the regulations are congruous with the statutory and legislative intent and are shown to be a reasonable response to industry conditions. *See Trans-Pacific Freight Conference v. FMC*, 650 F.2d 1235 (D.C. Cir. 1980).

There is no provision in the 1984 Act that exempts service contracts from the rulemaking authority of section 17(a) or limits that authority to "form and manner" requirements. Although section 2(1) of the 1984 Act, 46 U.S.C. app. 1701(1), expresses a Congressional policy of minimum government intervention,[8] this purpose underlies the entire 1984 Act and cannot be construed as a specific limitation on the Commission's authority to regulate the use of service contracts or as a provision in derogation of the rulemaking authority generally conferred by section 17(a). *See Association of American Railroads v. Costle*, 562 F.2d 1301, 1316 (D.C. Cir. 1977). While section 2(1) may affect the policy choices presented the Commission in administering the 1984 Act, it should not be construed as imposing a *laissez-faire* regulatory regime as argued by some of those opposed to the Petition. *See International Brotherhood of Teamsters v. I.C.C.*, 801 F.2d 1423, 1430 (D.C. Cir. 1986).

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[6] The ICCO Petition requests that the Commission allow a limited exception to an absolute requirement that service contracts be self-contained:

> A service contract may be incorporate by reference charges, surcharges, allowances, or adjustment factors set forth in the contract carrier's or contract conference's tariff.

ICCO Petition, at 22.

[7] In addition to urging the Commission to promulgate substantive standards concerning "most-favored-shipper" clauses and *de minimis* liquidated damages in service contracts, ICCO also proposes that such clauses in current service contracts be declared "null and void." Those parties opposed to the Petition argue that this would constitute unlawful retroactive rulemaking.

> Declaring contract provsiions, now filed and in effect, to be "null and void" would appear to constitute a retroactive application of a newly promulgated rule. *See Georgetown University Hospital v. Bowen*, 821 F.2d 750 (D.C. Cir. 1987). Accordingly, it appears that a rule restricting the use of certain provisions in service contracts could only be applied to contracts filed after its effective date.

[8] Section 2(1) of the Act provides:

> The purposes of this Act are—(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs * * *.

To the contrary, the legislative history of the 1984 Act indicates that Congress is "seriously concerned that service contracts not be employed so as to discriminate against all who rely upon the common carriage tradition of the liner system" and that Congress "expects the FMC to be cognizant of the effects * * * (on) common carriage that abuse of service contracting may occasion." H.R. Rep. No. 53, Part 1, 98th Cong., 1st Sess. 17 (1983). It appears that Congress intended the Commission to take an active role in ensuring that the integrity of the legislative scheme of the 1984 Act is preserved.

*C. Statutory Provisions Relating to Service Contracts*

The provisions of the 1984 Act that directly relate to service contracts are: (1) The service contract definition in section 3(21) of the 1984 Act, 46 U.S.C. app. 1702(21); (2) the "Tariffs" provisions governing the contents of service contracts in section 8(C) of the Act, 46 U.S.C. app. 1707(c); and (3) certain provisions in section 10, "Prohibited Acts," 46 U.S.C. 1709, which specify the service contract practices made unlawful by the 1984 Act.

1. The Service Contract Definition

The definition of a service contract in section 3(21) of the 1984 Act [9] contains several legal requirements. Only certain types of entities may enter into service contracts, and these contracts have specific attributes different from other types of contracts. That is, service contracts may *only* be entered into between shippers or shippers' associations and ocean common carriers or conferences and *must* contain *commitments* for: (a) A "certain minimum quantity of cargo over a fixed period of time" from the shipper; and (b) a "certain rate or rate schedule as well as a defined service level" from the carrier. Although the definition also contains a *permissive* element, *i.e.*, nonperformance provisions, all other elements are mandatory and without them a contract does not fall within the definition. Thus, a service contract, as defined in the 1984 Act, is not just a common law contract but also a statutory contract.

In urging a prohibition of "most-favored-shipper" clauses in service contracts, ICCO relies on the contract definition requirement of a "certain rate or rate schedule." This argument appears to be well-founded at least to the extent that the contract must be drafted so as to permit a person to ascertain the agreed upon rate from either the face of the document or a specified rate schedule document incorporated by reference in the service contract. While it does not necessarily mean that the contract may not contain alternative or contingent rates, it does appear to require more than the minimum certainty of terms required at common law.[10]

However, the definition of "service contract" does not lend support to the ICCO proposal to require service contracts to contain minimum liquidated damages clauses. Liquidated damages clauses are nonperformance provisions and, as such, are a permissive element of service contracts. The "service contract" definition in section 3(21) does not provide otherwise. Therefore, that definition does not give the Commission a basis to require liquidated damages for breach of contract, much less specify a level that must be stated in a service contract.

2. The "Tariffs" Provision for Service Contracts

Section 8(c) of the 1984 Act contains the core of the statutory scheme relevant to service contracts.[11] It requires, *inter alia*, that the "essential terms" of privately negotiated transportation contracts, including the "line-haul rate" and "liquidated damages for nonperformance, if any," be published in tariff format and made available to similarly situated shippers. Section 8(c) also provides that the exclusive remedy for a contract breach, unless the parties otherwise agree, "shall be an action in an appropriate court."

On their face, the section 8(c) provisions indicate parallels with key aspects of the service contract definition in section 3(21) of the Act. Consistent with use of the term "certain rate or rate schedule" in the service contract definition, requiring the publication of a "line-haul rate" in "tariff format" would appear to require a *specific numerical rate*. The legislative history of section 8(c) supports this interpretation and also indicates that Congress intended that the rate stated in a service contract would be a single-factor numerical rate for each specified volume committed by the shipper.[12] However, reference by incorporation to a rate stated in the contracting carrier's general public tariff is also contemplated.[13] Obviously, if the referenced tariff charge varies, then the contract charge will likewise vary. This type of varying rate provision appears to be permitted. Similarly, the "incorporation by reference" concept would appear to support tying the contract rate to the "essential terms" of other service contracts offered by the contracting carrier because those terms are also "published."

This analysis does not, however, appear to support the legality of the more extreme forms of "most-favored-shipper" clauses, particularly those where the contracting carrier agrees to match the lowest rate "offered" the shipper by any carrier in the trade covered by the contract. Tying the "line-haul rate" to an unpublished, nonbinding rate "offer" that cannot be readily ascertained by an interested party does not appear to "provide

[9] Section 3(21) of the 1984 Act, provides:

(21) "service contract" means a contract between a shipper and ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

[10] At common law, absolute certainty on price is not essential, only a definite agreement to agree on a price. *See Vigland v. Wylain, Inc.*, 633 F.2d 522, 526 (8th Cir. 1980).

[11] Section 8(c) of the 1984 Act provides:

(c) SERVICE CONTRACTS.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—

(1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(2) the commodity or commodities involved;

(3) the minimum volume;

(4) the line-haul rate;

(5) the duration;

(6) service commitments; and

(7) the liquidated damages for nonperformance, if any

The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.

[12] *See* S. Rep. No. 3, 98th Cong., 1st Sess. 31-33 (1983).

[13] The Senate Report, in discussing the "line-haul rate" requirement and its relationship to volume commitments, explains:

Many service contracts may provide for charges or allowances for transporting and handling the goods involved that may be different from those published in the otherwise applicable general tariff and, accordingly, any such variance must be identified in the line-haul rate disclosure. *To the extent any contract charge or allowance is the same, as that in the carrier's or conference's general public tariff, incorporation by reference will suffice.* (Emphasis added).

*Id.* at p. 31-32.

meaningful commercial disclosure," as contemplated by Congress. It does not inform other shippers of the rates available to them, either directly or by reference to other published rate matter. It would appear, therefore, that such clauses do not fulfill the minimum disclosure requirements of section 8(c) and are not permissible in contracts filed pursuant to that section.

The type of "most-favored-shipper" clause that is the most difficult to evaluate under section 8(c) is that which ties in "line-haul rate" to the lowest rate published in either the tariffs or service contracts of another carrier operating in the trade covered by the contract. At a minimum, it does not appear that this type of clause constitutes the type of "incorporation by reference" provision found acceptable in the Senate Report because it does not reference the contracting carriers' *own* rate publications.

Section 8(c) does not support ICCO's position that the Commission may establish minimum liquidated damages standards. The language of section 8(c), like the definition, indicates that liquidated damages clauses are optional, the use of the term "if any," being particularly significant. This would suggest that Congress did not intend the Commission to establish a liquidated damages minimum. The language of section 8(c) also indicates that to the extent liquidated damages provisions provide for remedies due to volume commitment breaches, they are subject to enforcement by the courts.

3. Prohibited Acts

The final area of analysis of the Commission's authority to promulgate substantive standards for service contracts is whether any types of provisions are proscribed by the 1984 Act itself. The Commission might preclude certain service contract provisions to prevent violations of the "prohibited acts" contained in section 10 of the act. The provisions of section 10 presented or raised by the Petition are sections 10(b)(1) and 10(a)(1), 46 U.S.C. app. 1709(b)(1) and 1709(a)(1).

a. *Section 10(b)(1).* Section 10(b)(1) of the 1984 Act makes it unlawful for any carrier or conference to charge rates for any service different from those shown in its tariffs or service contracts.[14] ICOO takes the position that service contracts which reference rates not actually stated in the contracting carrier's tariffs and essential terms publications, whether such rates be another carrier's tariffs or service contracts or reflect some third party offer, "are unlawful under section 10(b)(1)."

Section 10(b)(1) is an adaptation of former section 18(b)(3) of the 1916 Act [15] that was made applicable to tariffs and service contracts filed under the 1984 Act. The Commission by rule interpreted section 18(b)(3) to prohibit a carrier's tariff from referencing the rates published in any other carrier's tariff. 46 CFR 580.6(k)(2) (1985).[16] Because this rule prohibition continues in effect under the 1984 Act, section 10(b)(1) has been similarly applied.

Accordingly, to the extent the prohibitions of section 10(b)(1) of the 1984 Act were made applicable to service contracts, it appears that providing transportation under a service contract that incorporates by reference a competing carrier's tariff rates or service contract essential terms publication could be prohibited under the 1984 Act.

b. *Section 10(a)(1).* ICCO does not expressly allege a violation of section 10(a)(1) in its Petition with regard to *de minimis* liquidated damages clauses.[17] However, it does argue that service contracts that do not specify meaningful damages are illusory arrangements and, because they lack meaningful commitments, are not in fact "contracts." ICCO 's position is not without merit.

The Commission itself has recently noted that *de minimis* liquidated damages clauses may render a contract a "device to evade the otherwise applicable tariff rate," [18] and that "[s]ervice contracts with no meaningful cargo or service commitments could, at a minimum, violate section 10(a)(1) of the Act." [19] A "commitment" is required to make the contract a "service contract" as defined in section 3(21) of the 1984 Act. A service contract with a volume commitment that by its terms may be breached without significant penalties would appear not to contain a meaningul commitment on the part of the contracting shipper. As a result, such a contract could be deemed to constitute an "unjust or unfair device or means," allowing the shipper to obtain a contract rate different from the carrier's tariff rate "that would otherwise be applicable," in violation of section 10(a)(1) of the Act.

## IV. Conclusion

The Commission has determined to grant the Petition and to issue a proposed rule providing the relief sought, but only to the extent indicated below.

1. Most-Favored-Shipper Clauses

The Commission is proposing a rule that would establish reasonable standards for the use of "most-favored-shipper" clauses in service contracts. Under this rule, the Commission would permit service contracts that allow the carrier to match the service contract rate with the contracting carrier's best "published" rate for the contract commodity in the contract trade area.[20]

The proposed rule would, however, prohibit service contract provisions which make a contracting carrier's rate dependent upon another carrier's contract rate or tariff rate, whether that rate be in the form of an unpublished offer or a rate published in that other carrier's tariff or service contracts. Any service contract that ties its governing rate to an unpublished, non-binding rate "offer" that cannot be readily ascertained by an interested party, does not appear to provide the "meaningful commercial disclosure" contemplated by Congress. Contracts with such open-ended rate clauses also do not appear to inform other shippers of the rates available to them, either directly or by reference to other published rate matter,

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[14] Section 10(b)(1) specifically provides:

(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

(1) charge, demand, collect, or receive greater, less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;

[15] Section 18(b)(3) of the 1916 Act, 46 U.S.C. 817(b)(3) (1983) provided, in pertinent part:

(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time * * *

[16] 46 CFR 580.6(k)(2) provides:

(2) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

*See also,* 46 CFR 580.13(b).

[17] Section 10(a)(1) provides:

(a) IN GENERAL.—No person may—

(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.

[18] Docket No. 86-6—*Service Contracts,* Notice of Proposed Rulemaking at 21, 51 FR 5734, 5739 (Feb. 18, 1986).

[19] *Service Contracts,* 24 S.R.R. 277, 301 (1987).

[20] This may also have the practical effect of allowing the contracting carrier to match the best *published* offering of a competitor, by amending its tariff to meet any published rate reduction of that competitor.

and, as a result, do not appear to fulfill the minimum essential terms disclosure requirements of section 8(c).

Service contract rates made dependent on another carrier's tariff or service contract rates, while possibly less objectionable, also appear to be unacceptable. The "incorporation by reference" sanctioned in the 1984 Act's legislative history would not appear to extend to references of other carrier's rates. Moreover, this type of "most-favored-shipper" clause appears inconsistent with established Commission policy that precludes a carrier's tariff from referencing the rates published in any other carrier's tariff. This policy is grounded on historical precedent and was designed to lessen the burden on a shipper to refer to another carrier's tariff to determine applicable freight charges.

However, given the greater commercial freedoms service contracts appear to have been intended to provide, a direct application of tariff case law and policy to service contracting may be inappropriate. Accordingly, interested parties are specifically requested to address this issue.

2. De Minimis Liquidated Damages Provisions

ICCO's specific concern is that liquidated damages not be established at such low levels that they render meaningless any commitment made by the contract shipper to the carrier. Shippers correctly point out, on the other hand, that carriers are not forced to sign contracts with unacceptably low damages provisions.

That the Commission lacks the authority to directly regulate the use of liquidated damages provisions does not necessarily mean that the Commission is without authority to preclude service contract liquidated damages provisions which may permit evasion of the otherwise applicable tariff rate contrary to the 1984 Act and the policies underlying it, regardless of whether both parties to the contract willingly or unwillingly agree to those provisions. At a minimum, the Commission can police individual service contracts to ensure compliance with the Act. This would include investigations under section 10(a)(1) of the 1984 Act to determine whether contracts with *de minimis* liquidated damages provisions have been used as a device to unlawfully circumvent otherwise applicable tariff rates.

The fundamental problem involved in addressing *de minimis* liquidated damages provisions is devising an efficient and appropriate regulatory requirement that would preclude the possibility of illusory service contracting. Because the Commission cannot directly regulate the level of liquidated damages, it is difficult to prevent such contracting by regulation without establishing requirements that specify the consequences of non-performance of service contract commitments by prescribing the lawful rate that can be applied to contract shipments. We recognize, however, that restricting the freedom of contract parties to negotiate service contracts in this manner could inhibit the fundamental purposes of section 8(c) of the 1984 Act. Therefore, such a rulemaking must be evaluated very carefully and should only be undertaken upon a convincing showing the use of *de minimis* liquidated damages clauses is widespread and presents a serious problem that threatens the viability of the overall legislative scheme of the 1984 Act. Although the Petition and some comments indicate that the potential for illusory contracting through the use of *de minimis* liquidated damages clauses exists, and that such contracting may on occasion have occurred, it does not appear to be of sufficient magnitude to impose the significant restrictions on service contracting that effective remedial regulations could inevitably entail.

Moreover, surveys of recently filed service contracts indicate that although liquidated damages provisions are commonly below the contract rate level, they appear seldom set at a level that is patently *de minimis*.[21] Given this situation and the present capability of the Commission to identify and separately address any potentially unlawful arrangements, the policing of individual contracts identified in this fashion appears to be a more appropriate response to the ills complained of in the Petition.

However, this result should not be interpreted as the last word on this subject. If specious contracting through *de minimis* liquidated damages clauses becomes a widespread malpractice, policing of individual contracts exclusively in this fashion would require a substantial commitment of the Commission's limited resources and could prove impractical as well as inefficient. Under such circumstances the only alternative might be to establish regulatory requirements that would preclude the possibility of such unlawful service contracting. While this alternative does not appear to be required at this time, both shippers and carriers should be mindful of the potential industry-wide ramifications and the regulatory response, that the spread of contracting abuses would likely produce.

Finally, the Commission wishes to emphasize that the use of *de minimis* liquidated damages provisions or other contract provisions that may render a service contract other than a *bona fide* transaction is the type of activity or practice that Congress expected the Commission to prevent in order to preserve the common carriage system underlying the 1984 Act. *See*, H.R. Rep. No. 53, Part 1, 98th Cong., 1st Sess. 17 (1983). Meaningful minimum quantities of cargo over a fixed time period and rate and defined service level commitments between a carrier and a shipper are the legislative *quid pro quo* for departing from the published tariff rates of the carrier that would otherwise apply. The failure of the contract parties to fulfill the basic requirements of this *quid pro quo* not only offends the legislative scheme crafted by Congress but also could, as noted above, make the service contract but a device to evade the carrier's tariff rates in violation of section 10(a)(1) of the 1984 Act. We believe that the Commission is not only empowered but also recognizes that it has the responsibility to take whatever regulatory action may be necessary and appropriate to ensure against this result.

Accordingly, it is the stated policy of the Commission to require meaningful rate and volume commitments on the part of the shipper and meaningful service commitments on the part of the carrier in all service contracts entered into under the authority of section 8(c) of the 1984 Act. The Commission will scrutinize contracts carefully at the time of filing to ensure that they contain such commitments, pursuant to the requirements of 46 CFR 581.1(n). Failure to comply with the requirements of 46 CFR 581.1(n), as herein interpreted, will result in the rejection of the contract pursuant to 46 CFR 581.8 or other appropriate Commission action.

The Commission is therefore limiting this rulemaking to the promulgation of standards for the use of most-favored-shipper clauses in service contracts. The proposed rule will: (1) Define "most-favored-shipper" clauses; (2) prohibit the use of such clauses; and (3) permit a

[21] Surveyed were a sample of 99 service contracts out of 2136 contracts filed between January 2, 1987 and April 21, 1987, and 100 out of 748 contracts filed between September 1, 1987 and November 30, 1987. The selections were based upon a random computer-generated sampling of filed service contracts and are considered representative of all the contracts filed during those periods. The sampling disclosed that while some 50% of filed contracts had liquidated damages at a level below the contract rate, only some 6% established liquidated damages at $100 per container or less.

service contract to reference only matters set forth in a contracting carrier's or conference's tariffs or essential term's publications.

The Commission has determined that these rules are not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission finds that the proposed rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of that Act excepts from its coverage any "rule of particular applicability to rates or practices relating to such rates * * *" As the proposed rule relates to particular applications of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 350(h)). Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

**List of Subjects in 46 CFR Part 581**

Maritime carriers, Contracts, Rates and fares.

Therefore, it is ordered, that the Petition for Rulemaking filed by the International Council of Containership Operators is granted to the extent indicated above and denied in all other respects.

Further, pursuant to 5 U.S.C. 553; sections 8, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, and 1716); the Federal Maritime Commission proposes to amend Part 581 of Title 46 of the Code of Federal Regulations as follows:

## PART 581—[AMENDED]

1. The authority citation for Part 581 continues to read:

**Authority:** 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

**§ 581.1 [Amended]**

2. Section 581.1 is amended by redesignating paragraphs (f) through (t) as (g) through (u).

3. A new § 581.1(f) is added to read as follows:

**§ 581.1 Definitions.**

* * * * *

(f) "*Most-Favored-Shipper Clause*" means a service contract provision that allows the contract rate or rate schedule(s), or any other essential term(s), to be changed to adopt (by direct match, formula or by any other means) any provision offered to the contracting shipper or another shipper, by tariff filing, other service contract, or any other offering, by any other carrier or conference.

* * * * *

4. In § 581.5, paragraph (a)(3) is redesignated paragraph (a)(5) and new paragraphs (a)(3) and (a)(4) are added to read as follows:

**§ 581.5 Content of essential terms; contingency clauses.**

(a) * * *

(3) May not contain a most-favored-shipper clause as defined in this part.

(4) May incorporate by reference additional charges, surcharges, allowances, or adjustment factors as set forth in the service contract carrier's or conference's tariff of general applicability or service contract essential terms publication in the same trade in effect on the date of execution of the service contract. The reference must be made by specific FMC tariff or essential terms publication number to an active publication. The service contract may also provide for adjustments in such charges as effected by adjustments in the carrier's or conference's tariff of general applicability or essential terms publication. Each service contract shall describe any restriction(s) or limitation(s) which apply to such adjustments.

* * * * *

By the Commission.[22]

**Joseph C. Polking,**

*Secretary.*

Commissioner Ivancie concurring in part and dissenting in part:

I would have denied this Petition, with the exception of prohibiting certain most-favored-shipper clauses described below, because in my opinion it is premature to alter the Commission's service contract regulations inasmuch as there is an on-going and unfinished review of the effects of the Shipping Act of 1984 which will, among other things, directly affect the issue of service contracts. I, however, agree with the granting of this Petition to the limited extent that the proposed rule prohibits certain most-favored-shipper clauses that bind the contracting carrier to match unpublished, nonbinding offers. These types of offers cannot be adequately ascertained by interested parties and they do not afford a meaningful commercial disclosure, as contemplated by Congress.

[22] Commissioner Ivancie's concurring and dissenting opinion is attached.

[FR Doc. 88–5892 Filed 3–16–88; 8:45 am]
BILLING CODE 6730-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 88–06, Notice 2]**

### Federal Motor Vehicle Safety Standards; Side Impact Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking, technical corrections.

**SUMMARY:** This document corrects a notice of proposed rulemaking (NPRM) on amending Standard No. 214, *Side Door Strength.* The NPRM proposed to upgrade Standard No. 214 by adopting dynamic test procedures and performance requirements for passenger cars and appeared at page 2239 of the **Federal Register** of January 27, 1988 (53 FR 2239). This notice is necessary to correct technical errors that appeared in the NPRM. (In another notice in today's **Federal Register**, the agency is correcting a related NPRM on a test dummy to be used in dynamic testing.)

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4916.

The following corrections are made in FR Doc. 88–1541 appearing on 2239 in the issue of January 27, 1988:

1. On page 2245, column two, first full paragraph, "Component Test Procedure For Side Impact Protection" is corrected to read "Composite Test Procedure For Side Impact Protection".

## PART 571—[AMENDED]

**§ 571.214 [Amended]**

2. S5.4 is corrected to read as follows:

S5.4 *Adjustable seat back placement.* Place adjustable seat backs in the

manufacturer's nominal design riding position in the manner specified by the manufacturer. Place each adjustable head restraint in its highest adjustment position. Position adjustable lumbar supports so that they are set in their released, i.e., full back position.

3. S5.13.1 is corrected to read as follows:

S5.13.1 The anthropomorphic test dummies used for evaluation of a vehicle's side impact protection conform to the requirements of Subpart F of Part 572 of this Chapter. In a test in which the test vehicle is to be struck on its left side, each dummy is to be configured and instrumented to be struck on its left side, in accordance with Subpart F of Part 572. In a test in which the test vehicle is to be struck on its right side, each dummy is to be configured and instrumented to be struck on its right side, in accordance with Subpart F of Part 572.

4. S6 through S6.4.2 is corrected to read as follows (designated as S6 through S6.4.3):

S6 *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a correctly configured test dummy, conforming to Subpart F of Part 572 of this Chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and another conforming test dummy in the rear outboard position on the same side of the vehicle, as specified in S6.1 through S6.4. Each test dummy is restrained only in seating positions for which there is an automatic belt restraint. In addition, any folding armrest is retracted.

S6.1 *Torso.*

S6.1.1 *For a test dummy in the driver position.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and passes through the center of the steering wheel rim.

(b) *For a bucket seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and coincides with the longitudinal centerline of the bucket seat.

S6.1.2 *For a test dummy in the front outboard passenger position.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and the same distance from the vehicle's longitudinal centerline as would be the midsagittal plane of a test dummy positioned in the driver position under S6.1.1.

(b) *For a bucket seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket seat.

S6.1.3 *For a test dummy in either of the rear outboard passenger positions.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and, if possible, the same distance from the vehicle's longitudinal centerline as the midsagittal plane of a test dummy positioned in the driver position under S6.1.1. If it is not possible to position the test dummy so that its midsagittal plane is at this distance from the vehicle's longitudinal centerline, the test dummy is positioned so that the outermost point of the skin of the upper torso just touches the innermost surface of the vehicle next to the test dummy.

S6.2 *Lower torso.*

S6.2.1 *H-point.* The H-points of each test dummy coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment and procedures specified in SAE J826 (Apr 80) except that the length of the lower leg and thigh segments of the H-point machine are adjusted to 16.3 and 15.8 inches, respectively instead of the 50th percentile values specified in Table 1 of SAE J826.

S6.2.2 *Pelvic angle.* As determined using the pelvic angle gauge (GM drawing 78051–532 incorporated by reference in Part 572, Subpart E of this Chapter) which is inserted into the H-point gauging hole of the dummy, the angle of the plane of the surface on the lumbar-pelvic adaptor on which the lumbar spine attaches is 23 to 25 degrees from the horizontal, sloping upward toward the front of the vehicle.

S6.3 *Legs.* The upper legs of each test dummy rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces is 11.5 inches. To the extent practicable, the left leg of a test dummy in the driver position and both legs of test dummies in other positions are in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S6.4 for various passenger compartment configurations is permitted.

S6.4 *Feet.*

S6.4.1 *For a test dummy in the driver position.* The right foot of the test dummy rests on the undepressed accelerator with the heel resting as far forward as possible on the floorpan. The left foot is set perpendicular to the lower leg with the heel resting on the floorpan in the same lateral line as the right heel.

S6.4.2 *For a test dummy in the front outboard passenger position.* The feet of the test dummy are placed on the vehicle's toeboard with the heels resting on the floorpan as close as possible to the intersection of the toeboard and floorpan. If the feet cannot be placed flat on the toeboard, they are set perpendicular to the lower legs and placed as far forward as possible such that the heels rest on the floorpan.

S6.4.3 *For a test dummy in either of the rear outboard passenger positions.* The feet of the test dummy are placed flat on the floorpan and beneath the front seat as far as possible without front seat interference. If necessary, the distance between the knees can be changed in order to place the feet beneath the seat.

Issued on March 11, 1988.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 88–5830 Filed 3–14–88; 1:01 pm]

BILLING CODE 4910–59–M

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**49 CFR Part 572**

**[Docket No 88–07, Notice 2]**

## Side Impact Anthropomorphic Test Dummy

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking, technical corrections.

**SUMMARY:** This document corrects a notice of proposed rulemaking (NPRM) on establishing the specifications and qualification requirements for a side impact anthropomorphic test dummy. The NPRM was issued in conjunction with a proposal to upgrade Standard No. 214 by adding dynamic test procedures and performance requirements for passenger cars and appeared at page 2254 of the **Federal Register** of January 27, 1988 (53 FR 2254). This notice is necessary to correct technical errors that appeared in the NPRM (In another notice in today's **Federal Register**, the agency is correcting a related NPRM.)

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Washington, DC 20590. Telephone: (202) 366–4916.

The following corrections are made in FR Doc. 88-1542 appearing on 2254 in the issue of January 27, 1988:

**PART 572—[AMENDED]**

1. Section 572.42(a) introductory text, (b)(1) and (b)(4) are corrected to read as follows:

**§ 572.42 Thorax.**

(a) When the thorax of a completely assembled dummy (SA-SID-M001) is impacted by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak accelerations at the location of the accelerometers mounted on the thorax in accordance with § 572.44(b) shall be:

* * * * *

(b) * * *

(1) With the dummy seated and positioned on a seating surface as specified in § 572.44(h), adjust the dummy legs at a setting of 1 g, which just supports the limbs' weight when the limbs are extended horizontally forward.

(2) * * *

(3) * * *

(4) Position the dummy as specified in § 572.44(h), so that the thorax's midsagittal plane and tangential plane to the Hinge Mounting Block (Drawing SID-034) are vertical.

* * * * *

2. Section 572.43 (a) and (b)(1) are corrected to read as follows:

**§ 572.43 Lumbar spine and pelvis.**

(a) When the pelvis of a fully assembled dummy (SA-SID-M001) is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40 g and not more than 60 g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20 g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

(b) *Test Procedure.* (1) With the dummy seated and positioned on a surface as specified in § 572.44(h), adjust the dummy's leg joints at a setting of 1 g, which just supports the limbs' weight when the limbs are extended horizontally forward.

* * * * *

3. Section 572.44 (b)(1), (c), (d), (e), and (h)(1) are corrected to read as follows:

**§ 572.44 instrumentation and test conditions.**

* * * * *

(b) * * *

(1) One accelerometer is mounted on the Thorax to Lumbar Adaptor (SID 005) by means of a T12 Accelerometer Mounting Platform (SID 009) and T12 Accelerometer Mount (SID-037) with its seismic mass center at any distance up to 0.4 inches from a surface point on the Thorax to Lumbar Adaptor where two perpendicular planes aligned with the adaptor's vertical and horizontal center lines intersect.

* * * * *

(c) One accelerometer is mounted in the pelvis for measurement of the lateral acceleration with its sensitive axis perpendicular to the pelvic midsagittal plane The accelerometer is mounted on the rear wall of the instrument cavity (Drawing SID-087), with its seismic mass center located up to 0.30 inches from the point of intersection of the centerlines and 0.34 inches rearward of the rear wall of the instrument cavity.

(d) Instrumentation and sensors used must conform to the SAE J-211 (1980) recommended practice requirements. The outputs of the accelerometers installed in the dummy are then processed in the following manner:

(1) Analog data recorded in accordance with SAE J-211 (1980) recommended practice channel class 1000 specification.

(2) Filter the data with a 300 Hz. SAE Class 180 filter;

(3) Subsample the data to a 1600 Hz sampling rate; and

(4) Filter the data with a Finite Impluse Response (FIR) filter having the following characteristics—

(A) Passband frequency, 100 Hz.

(B) Stopband frequency, 189 Hz.

(C) Stopband gain, −50 db

(D) Passband ripple, 0.0225 db

(5) The digital computer program for the FIR filter is contained in Docket 79-04. Notice 02-018.

(e) The mountings for the spine, rib and pelvis accelerometers shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

* * * * *

(h) * * *

(1) The dummy is placed on a flat, rigid, clean, dry, horizontal smooth aluminum surface whose length and width dimensions are not less than 16 inches, so that the dummy's midsagittal plane is vertical and centered on the test surface. The dummy's torso is positioned to meet the requirements of § 572.42 and § 572.43. The seating surface is without the back support and the test dummy is positioned so that the dummy's midsagittal plane is vertical and centered on the seat surface.

* * * * *

Issued on March 11, 1988.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 88-5829 Filed 3-14-88; 1:01 pm]

BILLING CODE 4910-59-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 380

**[Docket No. 70999-7199]**

### Antarctic Marine Living Resources Convention Act of 1984

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Secretary of Commerce (Secretary) requests comment on and proposes this rule to implement the Antarctic Marine Living Resources Convention Act of 1984 which provides the legislative authority for United States implementation of the provisions of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The Convention establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources.

**DATE:** Comments on this rule must be received by May 2, 1988.

**ADDRESS:** Comments on this rule and requests for copies of the environmental assessment prepared for this rule should be sent to the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Washington, DC 20235. Mark on the envelope "Antarctic Convention Regulations."

Comments on the collection of information subject to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503. Attention: Desk Officer for NOAA.

**FOR FURTHER INFORMATION CONTACT:** Robin Tuttle (International Science, Development and Polar Affairs, 202-673-5302).

**SUPPLEMENTARY INFORMATION:** For background information on this proposed rule, and definitions of some of the terms in it, see the final rule establishing this part which is published in this same issue of the **Federal Register**. NMFS has reserved §§ 380.3 through 380.11 in the final rule; this

proposed rule offers these sections for public comment. These sections for comment are not already in effect by international agreement and NOAA has some measure of discretion in their interpretation. Public comments will be used to develop the final rule to add these sections, now reserved, to 50 CFR Part 380.

### Classification

See the final rule for Part 380 published in this same issue of the **Federal Register** for further classifications or determinations under other related laws.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared an environmental assessment (EA) for the final rule and this proposed rule under Executive Order 12114, and the Administrator concluded that there will be no significant impact on the environment as a result of these actions. A copy of the EA may be obtained from the Assistant Administrator at the address above.

This action is exempt from Executive Order 12291 because it involves a foreign affairs function of the United States. For the same reason section 553 of the Administrative Procedure Act does not apply. Nevertheless, NOAA is seeking comments on the proposed rule in order to provide the public with an opportunity to participate in the development of the Antarctic regulatory scheme. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared.

At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under NSF permits. Accordingly, these regulations should not have an incremental economic impact on U.S. vessels harvesting or performing associated activities in the Convention area.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. Comments on this requirement may be sent to OMB (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

### List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: March 14, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble of this proposed rule and that of the final rule published in this same issue of the **Federal Register**, 50 CFR Part 380 is proposed to be amended as follows:

## PART 380—ANTARCTIC MARINE LIVING RESOURCE CONVENTION ACT OF 1984

1. The authority citation for Part 380 continues to read as follows:

**Authority:** 16 U.S.C. 2431 *et seq.*

2. Subpart A is amended by adding §§ 380.3 through 380.11 to read as follows:

#### § 380.3 Relationship to other treaties and laws.

(a) Persons affected by these regulations should be aware that other Federal treaties, statutes, and regulations may also apply to their activities.

(b) The Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The provisions of the Conservation Act and its regulations titled "Conservation of Antarctic Animals and Plants" (45 CFR Part 670) apply to U.S. citizens engaged in certain specifically defined activities south of 60° S. latitude and may impose additional restrictions.

(c) Other Federal statutes and regulations regarding living resources that apply to persons affected by these regulations are the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.)*, and their implementing regulations. These may impose additional restrictions on harvesting and importing.

#### § 380.4 Harvesting permits.

(a) *General.*

(1) Each vessel of the United States that reduces an Antarctic marine living resource to its possession, or attempts to reduce an Antarctic marine living resource to its possession, must have a permit issued under this subsection and must have on board a completed permit form, or the individual doing the harvesting must have in his possession an individual permit for that harvesting. Notwithstanding the above, recreational fishing does not require a harvesting permit.

(2) Permits issued under this section do not authorize vessels of the United States or persons to harass, capture, harm, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidental to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this part, and any permit issued under the Act and this part. The owners and operators of each harvesting vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Application.* (1) Application forms are available from the Assistant Administrator. Completed applications for harvesting permits must be submitted for each vessel requiring a permit under this part. The applicant should allow 90 days for processing before the anticipated date to begin harvesting.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Substitutions of one vessel for another must be made by application to the Assistant Administrator. They are considered new applications.

(d) *Issuance.* (1) Permits may be issued to a harvesting vessel by the Assistant Administrator after the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and these regulations and approves the permit application.

(2) Before a permit is issued, the Assistant Administrator must determine that harvesting will not

(i) Decrease the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;

(ii) Upset the ecological relationships between harvested, dependent, and

related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in paragraph (d)(2)(i) of this section; and

(iii) Cause changes or increase the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources;

(iv) Violate the management measures of §§ 380.20, 380.21, and 380.22; or

(v) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(3) A completed permit form must contain

(i) The name and IRCS of the harvesting vessel and its permit number;

(ii) A detailed description of the proposed harvesting;

(iii) The date of issuance and expiration;

(iv) A list of the information to be submitted to NMFS; and

(v) All conditions and restrictions, and any additional restrictions and technical modifications, appended to the permit.

(4) Separate permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(e) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the harvesting vessel to which it is issued.

(g) *Display.* Each harvesting vessel operator must have a properly completed permit form available on board the harvesting vessel when engaged in harvesting and must produce it at the request of an authorized officer.

(h) *Suspension and revocation.* 15 CFR Part 904 governs permit sanctions under this part. A permit may be revoked or suspended, or additional permit restrictions may be imposed if the harvesting vessel is involved in the commission of any violation of the Act or this part.

(i) *Change in application information.* (1) The owner or operator of a harvesting vessel must report in writing any change in the information supplied under paragraph (c) of this section to the Assistant Administrator within 15 calendar days of the change. Failure to report a change within the specified time voids the permit. If a change in ownership is not reported and the permit is voided, penalties involved may accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the information supplied in the permit application requested or reported by an applicant such as a change in IRCS, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a harvesting vessel could significantly affect the states of any Antarctic marine living resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the owner or operator of a harvesting vessel of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(j) *Additional restrictions.* (1) The Assistant Administrator may, to achieve the purposes of the Convention and the Act, add additional restrictions to a permit for the conservation and management of Antarctic marine living resources. Violations of the additional restrictions will be treated as violations of this part.

(2) Notice of proposed additional restrictions will be sent to each harvesting vessel affected. The notice will include a summary of the reasons underlying the proposal. The owners of affected vessels or their representatives will be allowed 15 days to comment to the Assistant Administrator. The Assistant Administrator may make the proposed additional restrictions effective immediately, if necessary, to prevent substantial harm to Antarctic marine living resources.

(3) The final additional restrictions will be appended to the permit after the end of the 15-day comment period. Notice of the final additional restrictions will be sent to each person whose vessels are affected. A notice will include a response to comments from the owner or representative of the affected vessel.

(4) The effective date of additional restrictions which increase the regulatory burden is seven days after the Assistant Administrator's approval of the final version, or when the permit is issued, whichever is appropriate. The effective date of additional restrictions which relieve the regulatory burden is the date of approval.

(5) Additional restrictions may be modified by following the procedures of paragraphs (j)(2) through (j)(4) of this section.

**§ 380.5 Import permits.**

(a) *General.* (1) Any person importing Antarctic marine living resources into the United States must have either a permit under this subsection or a permit to harvest these resources as required by § 380.4.

(2) A permit issued under this subsection authorizes the importation of legally harvested Antarctic marine living resources but does not authorize any harvest of these resources.

(b) *Application.* (1) Application forms are available from the Assistant Administrator. Applicants should allow 30 days for processing before the anticipated date of importation.

(2) Applicants must provide complete and accurate information requested on the application form. This information will include, but not be limited to—

(i) The amount and type of Antarctic marine living resources to be imported;

(ii) The name of the vessel(s) that will harvest or has (have) harvested the resources;

(iii) The nationality (flag) of the harvesting vessel(s); and

(iv) A description of the method and location of the harvest of the resources to be imported, if the vessel involved is a vessel of a nation that is not a Contracting Party to the Convention or is a vessel of a nation that is not bound by a conservation measure that is in force with respect to the United States.

(c) *Issuance.* (1) Permits for importation may be issued after the Assistant Administrator finds that the importation meets the requirements of the Act and approves the permit application.

(2) Before a permit is issued the Assistant Administrator must find that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this section.

(3) A completed permit must contain

(i) The name of the importer;

(ii) The name of the vessel(s) involved in the harvesting;

(iii) The type and quantity of the resources to be imported;

(iv) The date of issuance and expiration; and

(v) Any conditions and restrictions deemed necessary by the Assistant Administrator.

(d) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* Permits are not transferable or assignable.

(f) A copy of the permit must accompany the resources being imported.

(g) *Change in application information.* (1) The applicant must report in writing any change in the information supplied under paragraph (b) of this section to the Assistant Administrator within 15 calendar days of any change. Failure to report a change within the specified time voids the permit.

(2) The Assistant Administrator may make technical changes in the permit requested by an applicant which will be effective immediately, if the changed information does not affect the legality of the importation.

(3) If in the opinion of the Assistant Administrator a requested permit change could change the finding made under paragraph (c) of this section, the request will be processed as an application for a new permit under this section.

(h) *Dispostion of resources not accompanied by required documentation.* (1) When Antarctic marine living resources are imported into the United States unaccompanied by a permit authorizing import, the importer must either

(i) Abandon the resources,

(ii) Waive claim to the resources, or

(iii) Place the resources into a bonded warehouse for no more than 60 days to allow the importer to obtain a permit authorizing import.

(2) If, within 60 days of such marine resources being placed into a bonded warehouse, the District Director of Customs receives documentation that import of the resources into the United States is authorized by a permit, the resources will be allowed entry. If documentation of a permit is not presented within the specified 60 days, the importer's claim to the resources will be deemed waived.

(3) When resources are abandoned or claim to them waived, the resources will be delivered to the Administrator of NOAA, or a designee, for storage or disposal as authorized by law.

**§ 380.6 Reporting and recordkeeping requirements.**

The operator of any vessel required to have a permit under this part must

(a) Maintain on board the vessel an accurate and complete reporting form required by its permit;

(b) Make the report available for inspection by an authorized officer or designee of the Assistant Administrator; and

(c) Within the time specified in the permit submit to the Assistant Administrator a copy of the report.

**§ 380.7 Vessel and gear identification.**

(a) *Vessel identification.* (1) The operator of each harvesting vessel assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so that it is visible from the air.

(2) The operator of each harvesting vessel not assigned an IRCS, such as small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix specific for the nonassigned vessel.

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the harvesting vessel in block roman alphabet letters and arabic numerals at least one meter in height for harvesting vessels over 20 meters in length, and at least one-half meter in height for all other harvesting vessels.

(b) *Navigational lights and shapes.* Each harvesting vessel must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each harvesting vessel must ensure that all deployed fishing gear which is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for two miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for two miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each harvesting vessel must

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the harvesting vessel obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel's activity and are properly functioning.

**§ 380.8 Facilitation of enforcement.**

(a) *General.* (1) The owner, operator, or any person aboard any harvesting vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the harvesting vessel; to move the harvesting vessel to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and resource and resource products on board for purposes of enforcing the Act and this part.

(2) The operator of each harvesting vessel subject to this part must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment.* (1) Each harvesting vessel must be equipped with a VHF-FM radiotelephone station location so that it may be operated from the wheelhouse. Each operator must maintain a continuous listening watch on channel 16 (156.8 mHz).

(2) Each harvesting vessel must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraphy and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) Harvesting vessels that are not equipped with processing facilities and that deliver all catches to a processing vessel on the harvesting grounds are exempt from the requirements of paragraph (b)(2) of this section.

(4) Harvesting vessels with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the

requirements of paragraphs (b)(1) and (b)(2) of this section.

(5) The Assistant Administrator, with the agreement of the appropriate Coast Guard commander, may, upon request by the owner or operator, accept alternatives to the radio requirements of this section for certain harvesting vessels or types of harvesting vessels provided they are adequate for communications needs.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any harvesting vessel subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF-FM radiotelephone, 2182 kHz radiotelephone, 500 kHz radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc," which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 380.6 of this part;

(ii) "RY-CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of a harvesting vessel's operator to stop the vessel when directed to do so by an authorized officer using VHF-FM radiotelephone (channel 16), 2182 kHz radiotelephone (where required), 500 kHz radiotelegraph (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this part.

(3) The operator of or any person aboard a harvesting vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the harvesting vessel instantly.

(d) *Boarding.* The operator of a harvesting vessel signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF-FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the harvesting vessel and facilitate boarding by the authorized officer and the boarding party;

(3) Provide the authorized officer or boarding party a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the harvesting vessel and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent standard approved by letter from the Assistant Administrator, with agreement of the Coast Guard. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the harvesting vessel, accounting for all conditions of loading and trim of the harvesting vessel and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below the top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.8 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the harvesting vessel not less than 0.7 meter (2 feet 3 inches) not more than 0.8 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.2 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each harvesting vessel must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters.

(2) The owner and operator of each harvesting vessel must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each harvesting vessel storing Antarctic marine living resources in a storage space must ensure that all non-resource product items are neither stowed beneath nor covered by resource products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

**§ 380.9 Gear disposal.**

(a) The operator of a harvesting vessel may not dump overboard, jettision or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Coast Guard commander or authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil toxic chemicals or any manmade items retrieved in a harvesting vessel's gear.

(b) The operator of a harvesting vessel may not abandon fishing gear into Convention waters.

**§ 380.10 Prohibitions.**

(a) It is unlawful for any person to do the following:

(1) Reduce to possession or attempt to reduce to possession any Antarctic marine living resources without a permit for such activity as required by § 380.4;

(2) Import into the United States any Antarctic marine living resources without either a permit to import those resources as required by § 380.5 of this part or a permit to harvest those resources as required by § 380.4 of this part;

(3) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention;

(4) To ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any Antarctic marine living resource which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this title, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource;

(5) Refuse to allow any authorized officer to board a vessel of the United States or vessel subject to the jurisdiction of the United States for the purpose of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(6) Resist a lawful arrest for any act prohibited by the Act, this part, or any permit issued under this part;

(7) Forcibly assault, resist, oppose, impede, intimidate or interfere with an authorized officer in the conduct of any boarding, inspection, or search described in paragraph (a)(5) of this section;

(8) Interfere with, delay, or prevent by any means the apprehension, arrest, or detention of another person, with the knowledge that such other person has committed any act prohibited by the Act, this part, or any permit issued under this part;

(9) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(10) Fail to identify, falsely indentify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this part;

(11) Falsify, or fail to make, keep, maintain, or submit any record or report required by this part;

(12) Fish in a closed area specified in § 380.20;

(13) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in § 380.21(a);

(14) Use any means or device which would reduce the size or obstruct the opening of the trawl meshes specified in § 380.21(a);

(15) Possess fish in violation of the catch limit specified in § 380.22;

(16) Discard netting or other substances in the Convention Area in violation of § 380.9; or

(b) It is unlawful to violate or attempt to violate any provision of this part, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

**§ 380.11 Penalties.**

Any person or harvesting vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR Part 904 (Civil Procedures), and other applicable laws.

[FR Doc. 88-5896 Filed 3-15-88; 9:56 am]
BILLING CODE 3510-22-M

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**50 CFR Part 672**

**[Docket No. 80112-8012]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Secretary of Commerce (Secretary) has determined that the risk of overharvesting sablefish by hook-and-line vessels in the Gulf of Alaska justifies implementing an "area registration" program to provide information on the numbers of these vessels participating in the fishery. The Secretary, therefore, proposes to implement an area registration program beginning in 1988, that requires operators of hook-and-line vessels to notify the Director, Alaska Region, NMFS (Regional Director), before fishing for groundfish in any area or district which is open to directed fishing for sablefish with hook-and-line gear. This requirement is necessary to allow the Regional Director to estimate fishing effort to avoid exceeding the hook-and-line harvest quotas. This action is intended as a conservation and management measure that will prevent the overharvest of sablefish and promote orderly fishing while providing for full utilization of the sablefish resource.

**DATES:** Comments must be submitted on or before March 29, 1988.

**ADDRESS:** Copies of the environmental assessment (EA) for this action may be obtained from Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Comments on the EA are specifically invited. Comments on the collection of information requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

**SUPPLEMENTARY INFORMATION:**

### Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (3-200 miles offshore) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations at 50 CFR 611.92 for foreign fishing and Part 672 for domestic fishing.

Total allowable catches (TACs) of sablefish are established for the Southeast Outside/East Yakutat and West Yakutat Districts of the Eastern

Regulatory Area and for the Central and Western Regulatory Areas in the Gulf of Alaska (see Figure 1 of 50 CFR 611.92). Shares of the TACS are assigned to hook-and-line gear. Large numbers of vessels using hook-and-line gear are expected to participate in the fishery in 1988 and subsequent years. The potential for hook-and-line vessels exceeding harvest quotas for sablefish in any of the above management areas is high.

This fishery grew rapidly in recent years. It displaced the foreign fishery completely in 1986. Numbers of hook-and-line vessels making landings in each of the management areas increased markedly between 1985 and 1986 and between 1986 and 1987 (see tabulation below of numbers of vessels making landings). Percentage increases between 1986 and 1987 ranged between 45 and 79 percent.

NUMBERS OF HOOK-AND-LINE VESSELS MAKING LANDINGS DURING 1985, 1986, AND 1987

| | 1985 | 1986 | 1987 | % change 1986–87 |
|---|---|---|---|---|
| Southeast outside East Yakutat districts | 115 | 243 | 353 | 45 |
| West Yakutat district | 80 | 131 | 216 | 65 |
| Central area | 121 | 218 | 391 | 79 |
| Western area | 53 | 63 | 94 | 49 |

Numbers of hook-and-line vessels fishing for sablefish in 1988 will almost certainly increase markedly from the numbers fishing in 1987, because continued high prices for sablefish will attract entrants into the fishery. Also, the Council has identified this fishery as a candidate for limited entry. Increased effort usually occurs in fisheries where limited entry is being considered, because fishermen seek to establish recognized rights in whatever limited entry scheme is implemented.

The directed hook-and-line sablefish fishery will start April 1. Because of the rapid growth of the fishery, projecting fishing effort in 1988 and subsequent years cannot be done with precision by reference to past years. Information on the actual amount of effort is needed to predict when area quotas will be taken; area registration is necessary to obtain this information.

Alternatives to area registration are estimates of effort based on: (1) Counting vessels which are Federally permitted to fish for groundfish with hook-and-line gear in 1988; (2) physically counting vessels in ports; (3) surveying processors to obtain an estimate of the number of vessels buying ice and/or bait; or (4) projecting numbers of vessels based on the increase from 1986 to 1987. Counting Federally permitted hook-and-line vessels would not provide accurate estimates of effort by management area. Physically counting vessels in port or surveying processors is labor intensive, costly, and prone to error. Projecting effort from past effort changes assumes some kind of predictable relationship in the increase in numbers of vessels. NMFS projects that effort will increase, but the extent of the increase is not known.

A program for area registration was implemented for the 1987 sablefish season by emergency rule (52 FR 9171, March 23, 1987) under Magnuson Act section 305(e). The Regional Director was able to use the numbers of vessels registered to estimate the amount of effort on the grounds. The amount of effort was substantial and represented marked increases from vessel effort in 1986. For examples, see the above tabulation of vessels making landings.

When sablefish are abundant and fishermen experience good catches, TACs can be achieved rapidly. Even at current levels of effort, an extra day of fishing can cause the TACs to be grossly exceeded. In 1987, season lengths in the Gulf of Alaska were short. The shortest seasons were in the Southeast Outside/East Yakutat and the West Yakutat Districts where initial season openings were 8–½ and 14 days, respectively. Experience gained by fishery managers during 1987 from the area registration program then in effect will improve the efficacy of area registration as a useful tool for predicting fishery closures. For these reasons, the Secretary proposes to establish area registration is the Gulf of Alaska, which would be in effect in each management area beginning with the 1988 hook-and-line sablefish directed fishing season.

The proposed area registration program will be designed to minimize burdens of fishermen. As in the past, vessel operators will be informed by news releases and contacts with organizations that they may begin registering on March 14, 1988, by calling (a) one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday; or between the hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 4:30 p.m., local time, Saturday and Sunday: Juneau, Alaska—Fishery Management Division, 706 West Ninth Street, toll-free telephone, in Alaska 800–478–7644, outside Alaska 800–334–7865; or (b), one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday: Kodiak, Alaska, Enforcement Division, 1211 Gibson Cove Road, telephone 907–486–3298; Sitka, Alaska, Enforcement Division, Post Office Building, telephone 907–747–6940.

The only information that the Regional Director will require to be submitted is the name of the person who is registering, the vessel's Federal Gulf of Alaska groundfish permit number, the regulatory area or regulatory district being registered for, and the date the vessel will start fishing. All groundfish fishermen using hook-and-line gear who are regulated under 50 CFR Part 672 must register before fishing for groundfish in any of the regulatory areas or districts in the Gulf of Alaska that are open to directed fishing for sablefish with hook-and-line gear. This means fishermen will be required to register each time they begin fishing in a different area. The Secretary has specified separate sablefish TACs for the Western Area, Central Area, West Yakutat District, and the combined East Yakutat/Southeast Outside Districts. Fishermen who intend to fish in either the East Yakutat District or Southeast Outside District, therefore, are required to register for the combined pair.

Even those fishermen who are fishing with hook-and-line gear for other groundfish species, such as rockfish and Pacific cod, must register if they are fishing in areas open to directed fishing for sablefish with hook-and-line gear. Imposition of area registration on all hook-and-line fishermen during the sablefish directed fishing season is necessary to facilitate enforcement of area registration. Otherwise, no practical means exist to differentiate whether a hook-and-line fisherman is fishing for sablefish or some other species of groundfish regulated under 50 CFR Part 672. As a practical matter, however, the economic return to fishermen fishing for sablefish is so great during the short sablefish directed

fishing seasons that few hook-and-line fishermen will be fishing for any groundfish species other than sablefish.

### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the sablefish fishery in the Gulf of Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, National Marine Fisheries Service, prepared an environmental assessment/regulatory impact review (EA/RIR) for this rule. The Assistant Administrator for Fisheries concluded that no significant impact on the environment will occur as a result of this rule. You may obtain a copy of the EA/RIR from the Regional Director at the address above.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socio-economic impacts discussed in the EA/RIR. A program for area registration is superior to other alternatives considered. Since NMFS conducted an area registration program during the 1987 hook-and-line fishery, NMFS considers costs incurred in that program to be representative of those that will occur in future years. The analysis is summarized as follows:

In 1987, fishermen registered with the National Marine Fisheries Service either in person or by telephone at offices in Juneau, Kodiak, or Sitka. If they registered by telephone, they called either from a local telephone or long distance. For long distance telephone calls, NMFS provided a toll-free telephone number both for calls from within and from outside Alaska. Actual billings to NMFS were $437 for long distance calls made from outside Alaska and $2,244 for long distance calls made from within Alaska.

NMFS also hired a temporary employee whose main job was to answer telephone calls to register fishermen. His salary of $1,680 was a cost to NMFS. Some time was spent by existing NMFS personnel in administering the program. During the time that area registration was in effect, NMFS personnel spent about 1 man-week, or 40 hours, in administration of the program. At a salary of about $20 per hour, the labor invested by NMFS was worth about $800. Since no new NMFS personnel were hired to administer the program, this amount was not a direct cost as a result of the area registration program, but is included here for perspective.

Although the costs of making telephone calls were borne by NMFS, fishermen were required to spend some of their own time to register prior to fishing. NMFS estimates that fishermen spent an average of 5 minutes per registration during 1987. Using 1987 as an estimate of costs of the program for subsequent years, about 770 fishermen will register a total of 1,118 times. At 5 minutes per registration, 5,590 minutes, or 93 hours will be spent by fishermen in this program. If time expended is worth $10 per hour, fishermen will spend about $930 in this program, or an average of about $1.20 per fishermen. This analysis shows that the total costs, including NMFS labor and private costs, will be about $5,300.

Successful management of the sablefish fishery prevents stocks from being overharvested, which reduces the risk that overfishing will occur. The purpose of the area registration program is to promote successful management of the hook-and-line sablefish fishery. The benefits of this program can be expressed in terms of the value of the sablefish harvest. In 1988, the total exvessel value of sablefish in the hook-and-line fishery will be about $34 million. This value is estimated from the total amount of sablefish assigned to hook-and-line gear, which is 23,100 metric tons, multiplied by 2,204 pounds per metric ton, multiplied by 0.67, which is the round weight to dressed weight conversion factor, and multiplied by $1 per pound dressed weight. To the extent that successful management prevents overharvesting the quota, this program conveys a benefit to the fishermen by promoting a stable fishery in future years, which in 1988 is worth about $34 million exvessel.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because registration for a particular area is estimated to take fishermen only about 5 minutes to either register in person or place a toll free telephone call at a time cost of about $1.20 per fishermen (using a labor rate of $10 per hour). As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

### List of Subjects in 50 CFR Part 672

Fisheries.

Dated: March 14, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, Part 672 is proposed to be amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. For reasons given in the preamble, a new § 672.6 is added to read as follows:

### § 672.6 Area registration.

(a) *General.* The operator of any fishing vessel regulated under this part must register the vessel with the Regional Director and be issued a registration number before fishing for groundfish with hook-and-line gear in any regulatory area or regulatory district, defined at § 672.2 of this part, that is open to directed fishing for sablefish with hook-and-line gear, except that registration will be combined for the Southeast Outside and East Yakutat Districts.

(b) *Information required for area registration.* For each registration, registrants must select only one regulatory area or regulatory district and provide the following information:

(1) The name of the vessel operator;

(2) The name of the vessel;

(3) The vessel's Federal Gulf of Alaska groundfish permit number;

(4) The date the vessel will begin fishing for groundfish in the selected regulatory area or regulatory district with hook-and-line gear; and

(5) The regulatory area or regulatory district in which such hook-and-line fishing will take place.

(c) *Limitations.* (1) Any registration under this section will have the effect of canceling any previous registration as of the date specified under paragraph (b)(4) of this section.

(2) The information required by paragraph (b) of this section must be submitted at:

(i) One of the following three NMFS locations in person or by telephone at one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday:

Fishery Management Division, National Marine Fisheries Service, 709 W. 9th Street, Juneau, Alaska, Toll-free telephone (In Alaska) 800–478–7644, (Outside Alaska) 800–334–7865

Enforcement Division, National Marine Fisheries Service, 1211 Gibson Cove Road, Kodiak, Alaska, Telephone 907–486–3298

Enforcement Division, National Marine Fisheries Service, Sitka, Alaska, Telephone 907–747–6940

or

(ii) at one of the following numbers between the hours of 8:00 a.m. to 12:00 noon, and 1:00 p.m. to 4:30 p.m., local time, Saturday and Sunday:

Fishery Management Division, National Marine Fisheries Service, Juneau, Alaska, Toll-free telephone (In Alaska) 800–478–7644, (Outside Alaska) 800–334–7865.

(3) It is unlawful for any person to fish for groundfish from a vessel regulated under this part with hook-and-line gear in any regulatory area or regulatory district, which is open to directed fishing for sablefish with hook-and-line gear, unless that vessel has been registered in accordance with this section and is in receipt of a registration number.

[FR Doc. 88–5897 Filed 3–14–88; 5:07 pm]
BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 53, No. 52
Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Meeting of the Committee on Judicial Review

**ACTION:** Committee on Judicial Review; notice of public meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Committee on Judicial Review of the Administrative Conference of the United States. The committee will discuss two draft reports, one of which will be considered at each meeting: a study concerning assignment of federal court jurisdiction over interlocutory challenges to agency action, prepared by Professor Thomas O. Sargentich, Washington School of Law, American University, and a study of nonacquiescence in federal court decisions by administrative agencies, prepared by Professors Samuel Estreicher and Richard Revesz, New York University School of Law.

**DATES:** Thursday, March 31, 1988, at 9:30 a.m. (Topic: Sargentich study of jurisdiction over interlocutory challenges). Thursday, April 7, 1988, at 10:00 a.m. (Topic: Estreicher and Revesz study of nonacquiescence by agencies).

*Location:* Office of the Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC 20037.

*Public Participation:* The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

**FOR FURTHER INFORMATION CONTACT:** Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7065.

Dated: March 14, 1988.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 88-5898 Filed 3-16-88; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Office of International Cooperation and Development

### Cooperative Agreements; Colorado State University

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with Colorado State University to provide partial support funding for collaborative international research on Increasing Plant Growth and Disease Resistance with New Trichoderma harizianum Mutants.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Colorado State University (CSU) to collaborate on international research for Increasing Plant Growth and Disease Resistance with New Trichoderma harizianum Mutants. Approximately $20,000 will be available in FY1988 to CSU to conduct collaborative research with Hungary's University of Technical Sciences.

Assistance will be provided only to CSU, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for supplies, research assistants and travel costs. Hungary's University of Technical Sciences will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $20,000 will be available in FY1988 to support this work. A total of $54,480 is anticipated to be provided for this cooperative research effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-8-023 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Date: March 14, 1988.

**Allen Wilder,**

*Contracting Officer.*

[FR Doc. 88-5823 Filed 3-16-88; 8:45 am]

BILLING CODE 3410-DP-M

### Cooperative Agreements; Howard University

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with Howard University to provide partial support funding for collaborative international research on Vernonia galamensis as Potential Raw Materials for Industrial Use.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1988 (FY 1988) to enter into a cooperative agreement with Howard University to collaborate on international research on the utilization of Vernonia galamensis. Approximately $25,000 will be available in FY 1988 to Howard University's Departments of Chemistry and Nutrition and Food to conduct collaborative research with the Department of Research and Specialist Services in Zimbabwe's Ministry of Agriculture.

Assistance will be provided only to Howard University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, processing, laboratory assistants, and travel. Zimbabwe's Department of Research and Specialist Services in the Ministry of Agriculture

will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $25,000 will be available in FY 1988 to support this work. A total of $50,000 is anticipated to be provided for this cooperative research effort over a two-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-8-020 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

**Allen Wilder,**

*Contracting Officer.*

Date: March 14, 1988.

[FR Doc. 88-5824 Filed 3-16-88; 8:45 am]

BILLING CODE 3410-DP-M

## Cooperative Agreements; Oregon State University

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with Oregon State University to provide partial support funding for collaborative international research on Application of US and French Data Bases to Evaluate Crop Water Requirement Estimating Methods and Effects of Climate.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Oregon State University to collaborate on international research on Application of US and French Data Bases to Evaluate Crop Water Requirement Estimating Methods and Effects of Climate. Approximately $22,000 will be available in FY1988 to Oregon State University's Department of Agriculture Engineering to conduct collaborative research with France's National Institute of Agronomy Research.

Assistance will be provided only to Oregon State University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for equipment and supplies, a research assistant, and international travel. France's National Institute of Agronomy Research will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $22,000 will be available in FY1988 to support this work. A total of $55,800 is anticipated to be provided for this cooperative research effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-8-021 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Date: March 14, 1988.

**Allen Wilder,**

*Contracting Officer.*

[FR Doc. 88-5825 Filed 3-16-88; 8:45 am]

BILLING CODE 3410-DP-M

## Cooperative Agreements; University of Rhode Island

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with the University of Rhode Island to provide partial support funding for collaborative international agricultural research on the Colorado Potato Beetle's Ecology, Natural Enemies, and Pest Potential.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with the University of Rhode Island to collaborate on international research on the Colorado Potato Beetle's Ecology, Natural Enemies, and Pest Potential. Approximately $21,000 will be available in FY1988 to the University's Department of Plant Sciences to conduct collaborative research with Mexico's Morelos State University.

Assistance will be provided only to the University of Rhode Island, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs of equipment and supplies, research assistants and travel. Mexico's Morelos State University will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $21,000 will be available in FY1988 to support this work.

Information on proposed Agreement #58-319R-8-024 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Date: March 14, 1988.

**Allen Wilder,**

*Contracting Officer.*

[FR Doc. 88-5826 Filed 3-16-88; 8:45 am]

BILLING CODE 3410-DP-M

## Cooperative Agreements; Rutgers University

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with Rutgers University to provide partial support funding for collaborative international research on Integrated Vegetable Production Systems for Controlled Environment Agriculture.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Rutgers University to collaborate on international research on Integrated Vegetable Production Systems for Controlled Environment Agriculture. Approximately $20,000 will be available in FY1988 to Rutgers University to conduct collaborative research with the Dutch Ministry of Agriculture's Institute of Agricultural Engineering, Vegetable Research Station, and Center for Agrobiological Research.

Assistance will be provided only to Rutgers University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, a research assistant, and international travel. The Dutch Ministry of Agriculture will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $20,000 will be available in FY1988 to support this work. A total of $49,655 is anticipated to be provided for this cooperative research effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-8-022 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Date: March 14, 1988.
**Allen Wilder,**
*Contracting Officer.*
[FR Doc. 88-5827 Filed 3-16-88; 8:45 am]
BILLING CODE 3410-DP-M

## Forest Service

### Supplements To Draft Environmental Impact Statements for Land and Resource Management Plans of the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, Wallowa-Whitman, and Wenatchee National Forests of Oregon and Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare supplements to draft environmental impact statements for seven National Forests in Oregon and Washington.

**SUMMARY:** The Department of Agriculture, Forest Service, has withdrawn its intent to prepare a supplements to draft environmental impact statements (EIS) for the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, Wallowa-Whitman, and Wenatchee National Forests. The purpose of each supplement was to present for public review and comment additional information that was not included in the draft EIS and proposed plan for these seven National Forests. The technical basis for the proposed supplement is still undergoing review at the national level, creating uncertainty about the need and scope for supplements. In view of this uncertainty, the Notice of Intent which scheduled documents for public review in August and September 1987, is now being withdrawn.

The Notice of Intent, published in the **Federal Register** of July 17, 1987, is hereby rescinded (52 FR 27035).

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about these supplements should be directed to Tom Nygren, Acting Director of Planning, P.O. Box 3623, Portland, OR 97208; Phone (503) 221-2387.

Dated: March 11, 1988.
**James F. Torrence,**
*Regional Forester.*
[FR Doc. 88-5834 Filed 3-16-88; 8:45 am]
BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

### Kentucky Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on March 24, 1988, at the Radisson Hotel, Broadway and Vine Streets, Lexington, Kentucky. The purpose of the meeting is to review for approval a briefing report summarizing information received at community forums conducted by the Advisory Committee in Lexington and Louisville and to develop program plans for FY 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1988.
**Susan J. Prado,**
*Acting Staff Director.*
[FR Doc. 88-5835 Filed 3-16-88; 8:45 am]
BILLING CODE 6335-01-M

### Tennessee Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on March 25, 1988, at the Vanderbilt Plaza Hotel 2100 West End Avenue, in Nashville. The purpose of the meeting will be to discuss current civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James F. Blumstein, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1988.
**Susan J. Prado,**
*Acting Staff Director.*
[FR Doc. 88-5836 Filed 3-16-88; 8:45 am]
BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Advisory Committees for Trade Policy Matters

**SUMMARY:** In accordance with subsection 135(c) of the Trade Act of 1974, 19 USC 2155, as amended by the Trade Agreements Act of 1979, (Pub. L. 95-39), the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Subpart 101-6.10 (1987), Federal Advisory Committee Management Rule, it has been determined by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) that the renewal of the Advisory Committes for Trade Policy Matters is in the public interest.

Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters
Industry Sector Advisory Committees for Trade Policy Matters
- (ISCA 1)—Aerospace Equipment
- (ISCA 2)—Capital Goods
- (ISCA 3)—Chemicals and Allied Products
- (ISCA 4)—Consumer Goods
- (ISCA 5)—Electronics and Instrumentation
- (ISCA 6)—Energy
- (ISCA 7)—Ferrous Ores and Metals
- (ISCA 8)—Footwater, Leather, and Leather Products
- (ISCA 9)—Industrial and Construction Material and Supplies
- (ISCA 10)—Lumber and Wood Products
- (ISCA 11)—Nonferrous Ores and Metals
- (ISCA 12)—Paper and Paper Products
- (ISCA 13)—Services
- (ISCA 14)—Small and Minority Bunisess
- (ISCA 15)—Textiles and Apparel
- (ISCA 16)—Transportation, Construction, and Agricultural Equipment
- (ISCA 17)—Wholesaling and Retailing

Industry Functional Advisory Committee on Customs Matters
Industry Functional Advisory Committee on Standards
Industry Functional Advisory Committee on Intellectual Property Rights

The committees were established in 1980, and renewed in 1982, 1984, and 1986 to provide technical and policy advice and information to the Secretary and the USTR on trade policy matters, including factors relevant to U.S. positions in trade negotiations, and on other matters arising in connection with the administration of U.S. trade policy. Members of each committee are appointed by and serve at the discretion of the Secretary and the USTR. It is proposed that each committee will meet at least semi-annually at the request of the Secretary and the USTR, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Trade Advisory Center, International Trade Administration (ITA) of the Department of Commerce, administers the program.

Copies of the Committees' charters will be filed with appropriate committees of the Congress and copies will be forwarded to the Library of Congress.

**EFFECTIVE DATE:** March 8, 1988.

Membership: Representatives from industry or industry associations wishing to be considered for appointment to serve on these committees are requested to make application in writing to the Trade Advisory Center, Room H-4012, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3268. Comments and inquiries may be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Clare Soponis, Director, Trade Advisory Center, telephone (202) 377-3268.

Date: March 11, 1988.

**Michael R. Czinkota,**

*Deputy Assistant Secretary for Trade Information and Analysis.*

[FR Doc. 88-5882 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-DR-M

## National Bureau of Standards

**[Docket No. 80217-8017]**

## National Voluntary Laboratory Accreditation Program

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Publication of NVLAP Directory Supplement.

**SUMMARY:** The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the fourth quarter of 1987.

**FOR FURTHER INFORMATION CONTACT:** Harvey W. Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975-4016.

**SUPPLEMENTARY INFORMATION:** This supplement to the 1986-87 NVLAP Directory of Accredited Laboratories (NBSIR 87-3519) is published pursuant to section 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period October 1, 1987, through December 31, 1987.

| | TIM | CTS | CAR | STO | ACO | CPL | DOS | ECT | Total |
|---|---|---|---|---|---|---|---|---|---|
| Initial | | 1 | | | 1 | 1 | 1 | 1 | 5 |
| Suspended | | | −1 | | | | | | −1 |
| Terminate | | −3 | | −5 | | | | | −8 |
| Balance | 36 | 23 | 21 | 4 | 9 | 8 | 51 | 17 | 169 |

The laboratories awarded initial accreditation are:

CTS: Engineers International, Westmont, IL, Madan M. Singh 312-963-3460

ACO: Twin City Testing Corp., St. Paul, MN, Norman E. Henning 612-645-3601

CPL: Champion International Corp., West Nyack, NY, Diane M. Lee 914-578-7157

DOS: Nuclear Sources and Services, Houston, TX, G.T. O'Bannion 713-641-1379

ECT: Stauffer Japan, Ltd., Ibaraski, Japan, Mitsonobu Samoto 03-261-8967

The laboratories whose accreditation was terminated are:

CTS: CalMat Co., Irwindale, CA

The Walt Keeler Co., Wichita, KS

Smith-Emery Company, Los Angeles, CA

STO: PFS Corporation, Madison, WI

R.F. Geisser & Assoc., East Providence, RI

Shelton Research, Inc., Santa Fe., NM

Arnold Green Testing Laboratories, Auburn, MA

Warnock-Hersey International, Middleton, WI

TIM—Insulation LAP

CTS—Construction Testing Services LAP (formerly Concrete LAP)

CAR—Carpet LAP

ACO—Acoustical Testing Services LAP

STO—Stove LAP

CPL—Commercial Products LAP (Paint, Paper, Seals and Sealants)

DOS—Dosimetry LAP

SEA—Seals and Sealants LAP

ECT—Electromagnetic Compatibility and Telecommunications

**Ernest Ambler,**

*Director.*

Date: March 11, 1988.

[FR Doc. 88-5814 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-13-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

March 14, 1988.

In the table of the letter to the Commissioner of Customs published in the **Federal Register** on January 4, 1988 (53 FR 55), correct the sublimit for Category 340-Y to 359,000 dozen. (This limit was incorrectly changed to 395,000 dozen. See 53 FR 3909, dated February 5, 1988.)

In addition, TSUSA number 384.5214 in Category 359-D should be added to the TSUSA exceptions for Category 359-O in footnote 18 and TSUSA number 706.4111 in Category 369-L should be

added to the TSUSA exceptions for Category 369–O in footnote 20.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–5876 Filed 3–16–88; 8:45 am]

BILLING CODE 3510–DR–M

## Guaranteed Access Levels for Cotton and Man-Made Fiber Textile Products From the Dominican Republic

March 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

### Background

A notice was published in the **Federal Register** on December 28, 1987 (52 FR 48858) announcing that the United States had requested consultations to establish levels of restraint on exports from the Dominican Republic of products in Categories 338/339 (cotton knit shirts), 342/642 (cotton and man-made fiber skirts) and 647/648 (man-made fiber trousers, slacks and shorts). Consultations are scheduled to be held this month.

In previous consultations on called categories with the Dominican Republic, guaranteed access levels have been established for shipments qualifying for the Special Access Program.

In view of this fact, it is recommended that firms that intend to use the guaranteed access level, should one be established as a result of consultations on these called categories, begin using form ITA–370P to accompany the shipment of cut parts exported from the United States that would qualify under the Special Access Program.

This action is without prejudice to the outcome of consultations with the Domician Republic on these called categories.

U.S. Customs will sign the first section of the form ITA–370P accompanying the shipment of cut parts exported from the United States. Until notification to the contrary, all shipments of products in these categories will require a visa issued by the Government of the Dominican Republic for entry into the United States. Entry cannot be made under the Special Access Program.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–5877 Filed 3–16–88; 8:45 am]

BILLING CODE 3510–DR–M

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

March 14, 1988.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, please call (202) 377–3712.

### Summary

In the letter published below, the Chairman of the Committee for the implementation of Textile Agreements directs the Commissioner of Customs to restore unused carryforward to the current limits for Categories 341 and 648.

### Background

A CITA directive dated May 12, 1987 (52 FR 18413), as amended on November 16, 1987 (52 FR 44623) and December 30, 1987 (53 FR 52), established limits for cotton and man-made fiber textile products in Categories 341 and 648, among others, produced or manufactured in Sri Lanka and exported during the period which began on June 1, 1987 and extended through December 31, 1987. The November 16, 1987 directive is being rescinded.

A CITA directive also dated December 30, 1987 (53 FR 53) established import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including Categories 341 and 648, produced or manfactured in Sri Lanka and exported during the five-month period which began on January 1, 1988 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sir Lanka, the current limits for Categories 341 and 648 are being adjusted to restore carryforward that was requested but not used during the previous agreement year which began on June 1, 1986 and extended through May 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers in available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreement.*

**Committee for the Implementation of Textile Agreements**

March 14, 1988.

*Commissioner of Customs,*
*Department of the Treasury,*
*Washington, DC 20229*

Dear Mr. Commissioner: This directive cancels and supersedes the directive of November 16, 1987 from the Chairman, Committee for the Implementation of Textile Agreements, adjusting the limits of cotton and man-made fiber textile products in Categories 341 and 648, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988.

This directive amends, but does not cancel, the directive issued to you on December 30, 1987 concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the five-month period which began on January 1, 1988 and extends through May 31, 1988.

Effective on March 18, 1988, the directive of December 30, 1987 is amended to adjust limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended [1]

| Category | 12-mo. adjusted limit [1] |
|---|---|
| 341 | 222,918 doz. |
| 648 | 73,811 doz. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] The bilateral agreement provides, in part, that: (1) specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-5878 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-DR-M

## Changes in Authority To Issue Export Visas and Certification for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products From the Dominican Republic

March 11, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Notice.

**AUTHORITY:** Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic

**SUMMARY:** The Government of the Dominican Republic has notified the United States Government that, effectively immediately, Dominga Martinez Cruz has been authorized to issue export visas and certifications for textiles and textile products exported from the Dominican Republic, replacing Jose Manuel Fernandez. Accordingly, shipments of textiles and textile products accompanied by an export visa or certification issued by Jose Manuel Fernandez will be denied entry by U.S. Customs. Importers are advised that a new visa must be obtained or a visa waiver must be requested from the Government of the Dominican Republic.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:** See **Federal Register** notices 46 FR 34619, dated July 2, 1981; and 51 FR 6595, dated March 4, 1987.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-5879 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment to the Export Visa Arrangement for Certain Cotton and Man-Made Fiber Textile Products From Indonesia

March 14, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of the March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1988. For further information contact Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, (202) 377-4212.

### Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, into the United States of textile products in merged Categories 342/642 exported from Indonesia on and after July 1, 1987 for which the Government of Indonesia has not issued an appropriate export visa.

### Background

A CITA directive dated May 19, 1987 was published in the **Federal Register** (52 FR 20134) which announced the establishment of a new export visa arrangement for entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia.

A further CITA directive dated December 24, 1987 was published in the **Federal Register** (52 FR 49189) which amended the visa arrangement to coincide with the implementation of the new category system.

Under the terms of the Bilateral Textile Agreement of September 25 and October 3, 1985, as amended, the directive of May 19, 1987, as amended, is further amended to include coverage of cotton and man-made fiber textile products in merged Categories 342/642, produced or manufactured in Indonesia and exported to the United States on and after July 1, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 14, 1988.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1987, as amended on December 24, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements concerning export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia.

Effective on March 18, 1988, you are directed to prohibit shipments of cotton and man-made fiber textile products in merged Categories 342/642 entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), which have been produced or manufactured in Indonesia and exported on and after July 1, 1987 from Indonesia for which the Government of Indonesia has not issued an appropriate visa.

Further, should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category is added to the agreement or becomes subject to import quotas shall require a visa. In the event that a sublimit of a merged category exists, or is established, a visa for that category is required.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-5880 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-DR-M

## Request for Public Comment on Bilateral Textile Consultations With the Government of Jamaica to Review Trade in Categories 342/642

March 14, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on

embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

**Summary**

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner to establish a ninety-day limit for cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported during the period February 8, 1988 through May 7, 1988.

**Background**

On February 8, 1988, the Government of the United States requested consultations with the Government of Jamaica with respect to Categories 342/642 (cotton and man-made fiber skirts). This request was made under the terms of the bilateral textile agreement between the Governments of the United States and Jamaica of August 27, 1986, as amended, relating to trade in cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products which provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period which begins on May 8, 1988 and extends through December 31, 1988 at a level of 94,253 dozen.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Categories 342/642 exported during the ninety-day consultation period which began on February 8, 1988 and extends through May 7, 1988 at the prescribed limit of 42,275 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limit specified above.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Jamaica, further notice will be published in the **Federal Register**.

In previous consultations with the Government of Jamaica on called categories, guaranteed access levels have been established for shipments qualifying for the Special Access Program.

In view of this fact, it is recommended that firms that intend to use the guaranteed access level, should one be established as a result of consultations on these categories, begin using form ITA-370P to accompany the shipment of cut parts exported from the United States that would qualify under the Special Access Program.

This action is without prejudice to the outcome of consultations with Jamaica on these called categories.

U.S. Customs will sign the first section of the form ITA-370P accompanying the shipment of cut parts exported from the United States. Until further notification, all shipments of products in these categories will require a visa issued by the Government of Jamaica for entry into the United States. Entry cannot be made under the Special Access Program.

A summary market statement for these categories follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 342/642, under the agreement with Jamaica, or in any other aspect thereof, or to comment on domestic production or availability of apparel products included in the categories, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Jamaica—Market Statement**

*Cotton and Man-made Fiber Skirts (Category 342/642)*

January 1988.

*Summary and Conclusions*

U.S. imports of cotton and man-made fiber skirts (Category 342/642) from Jamaica were 120,787 dozen during year ending November 1987, eight and one half times the 13,936 dozen imported a year earlier. During the first eleven months of 1987, imports of cotton and man-made fiber skirts (Category 342/642) from Jamaica reached 118,247 dozen, eight and one half times the 13,615 dozen imported during the same period of 1986, seven times the total imported in calendar year 1986, and 44 times the 2,653 dozen shipped in calendar year 1985.

The U.S. market for cotton and man-made fiber skirts (Category 342/642) has been disrupted by imports. The sharp and substantial increase in imports from Jamaica has contributed to this disruption.

*U.S. Production and Market Share*

U.S. Production of cotton and man-made fiber skirts has been on the decline, dropping from 90,101 thousand dozen in 1982 to a depressed 7,940 thousand dozen average during 1984 and 1985, a decline of 13 percent. Production in 1986 recovered slightly, reaching 8,126 thousand dozen, but remained below the 1983 level and was 11 percent below the 1982 level. Annualized U.S. production data for the first six months of 1987 indicates that 1987 production of cotton and man-made fiber skirts will be up a little more reaching an estimated 8,284 thousand dozen. The estimated 1987 production level is equal to the 1983 level, but still nine percent below the 1982 level. The domestic manufacturers' share of the market dropped 25 percentage points in just four years, falling from 83 percent in 1982 to 58 percent in 1986. The U.S. market share is expected to continue its decline into 1987, falling another eight percentage points, to 50 percent. U.S. imports are expected to have a greater share of the U.S. market than domestic manufacturers in 1987.

*U.S. Imports and Import Penetration*

U.S. Imports of cotton and man-made fiber skirts (Category 342/642) at 5,995 thousand dozen in 1986 were more than three times tne amount imported in 1982. The sharp and substantial increase in imports continued into 1987. Cotton and man-made fiber skirt imports (Category 342/642) during the first eleven months of 1987 were 7,673 thousand dozen, 38 percent above the 5,542 thousand dozen imported during the same period in 1986. The ratio of imports to domestic production nearly quadrupled, increasing from 20 percent in 1982 to 74 percent in 1986. The ratio is expected to increase above 100 percent in 1987.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 86 percent of Jamaica's cotton and man-made fiber skirt imports during the first ten months of 1987 entered under TSUSA number 384.3444—women's and girls' cotton knit skirts not ornamented; 384.5251—women's cotten woven skirts, not of corduroy, denim or velventeen, not ornamented; and 384.9445—women's man-made fiber woven skirts, not ornamented. These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

**Committee for the Implementation of Textile Agreements**

March 14, 1988.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 18, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Jamaica and exported during the ninety-day period which began on February 8, 1988 and extends through May 7, 1988, in excess of 42,275 dozen.[1]

Textile products in Categories 342/642 which have been exported to the United States prior to February 8, 1988 shall not be subject to this directive.

Textile products in Categories 342/642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-5881 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after February 7, 1988.

## DEPARTMENT OF ENERGY

### Conservation and Renewable Energy Office

### National Energy Extension Service Advisory Board; Change in Meeting Dates

This is to advise that the meeting notice of the National Energy Extension Service Advisory Board was in error, and the meeting announced in the **Federal Register** (53 FR 4711) on February 17, 1988, was held on March 7 and 8, rather than March 21 and 22, 1988.

**Transcripts**

Available within three weeks for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 14, 1988.

Howard H. Raiken,

*Advisory Committee Management Officer.*

[FR Doc. 88-5868 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[ERA Docket No. 88-08-NG]**

### Alenco Resources Inc.; Application to Import Natural Gas From and Export Natural Gas to Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for the short-term importation, exportation, and sale of natural gas on a blanket basis.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 12, 1988, of an application filed by Alenco Resources Inc. (Alenco) requesting blanket authorization to import natural gas from Canada for sale to purchasers in the United States on a short-term or "spot" basis and to export natural gas to Canada for sale to spot market purchasers.

Alenco requests that the scope of the authorization be broad enough for Alenco to import up to 54 Bcf and to export up to 54 Bcf of natural gas over a two-year term beginning with the date of the first import or export. Alenco also requests that ERA set import and export limits as a total volume over the term of the authorization rather than setting maximum daily quantities.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than April 18, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Alenco contemplates purchasing natural gas supplied from a variety of Canadian suppliers, including its affiliates, and reselling such supplies to any suitable purchaser, which could include local distribution companies, pipelines, and commercial and industrial end-users. Alenco also contemplates acting as a facilitator for the importation of other natural gas supplies, acting as agent on behalf of both producers and purchasers.

Alenco, a Delaware Corporation, is a wholly owned subsidiary of Alenco Inc. which is a wholly owned subsidiary of Alberta Energy Company Ltd.

Alenco intends to utilize the existing facilities of U.S. and Canadian pipelines and it will file quarterly reports with the ERA detailing its transactions.

Alenco requests that an authorization be granted on an expedited basis. An ERA decision on Alenco's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import/export policy guidelines, under which the competitiveness of an import/export arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import/export arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., April 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Alenco's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 10, 1988.

**Constance L. Buckley,**

*Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–5869 Filed 3–16–88; 8:45 am]

BILLING CODE 6450–01–M

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**[ERA Docket No. 88–06–NG]**

## Midcon Sales, Inc.; Application To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to import natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 2, 1988, of an application filed by MidCon Sales, Inc. (MidCon Sales), for blanket authorization to import up to 200 Bcf of natural gas per year over a two-year term beginning on the date of first delivery. MidCon Sales would import the gas on a short-term or spot basis for its own account or act as a broker for a wide range of U.S. purchasers and Canadian suppliers.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than April 18, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Larine Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** MidCon Sales is a Delaware corporation with its principal place of business in Lombard, Illinois. The applicant is an indirect wholly-owned subsidiary of MidCon Corp., Occidental Petroleum Corporation. No contracts have been executed and therefore the application does not identify the suppliers, buyers, or prices, however, MidCon Sales asserts that the specific terms of each import and sale would be based on competition in the marketplace. MidCon Sales intends to utilize existing pipeline facilities for transportation of the volumes imported and proposes to submit quarterly reports detailing each transaction.

MidCon Sales has requested that the ERA consider its requested authorization on an expedited basis. An ERA decision on MidCon Sales' request for expedited treatment, particularly with respect to whether additional written comments or other procedures will be necessary in this case, will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this import arrangement, it may designate a total amount of authorized volumes for the term rather than the annual unit requested, in order to provide the applicant with maximum operating flexibility.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are

specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 10585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MidCon Sales' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 10, 1988.

**Constance L. Buckley,**

*Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-5870 Filed 3-17-88; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

## Issuance of Decisions and Orders; Week of January 18 Through January 22, 1988

During the week of January 18 through January 22, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*Glen Milner, 1/22/88, FKFA-0153*

Glen Milner filed an Appeal from a partial denial by the Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that only one division of the Albuquerque Operations Office, the Transportation Safeguards Division, had conducted an adequate search for responsive documents. The DOE also found that another division, the Weapons Production Division, has not conducted a search even though that Division may possess responsive documents. Accordingly, the matter was remanded to the Authorizing Official, who was instructed to conduct a search for responsive documents in the Weapons Production Division.

### Petition for Special Redress

*Oklahoma, 1/20/88, KEG-0025*

The Department of Energy (DOE) issued a Decision and Order concerning the Petition for Special Redress filed by the State of Oklahoma. Oklahoma sought approval to use Stripper Well funds for a program previously determined to fall outside the terms of the Stripper Well Settlement Agreement. After considering Oklahoma's Petition, the DOE approved the State's proposal to use $190,000 for the installation of energy conservation equipment at Langston University, a state institution. The DOE found that the program would result in increased energy conservation, timely restitution to energy consumers, and a balanced distribution of oil overcharge monies. The DOE concluded, therefore, that the proposed expenditure was permissible under the terms of the Settlement Agreement. Accordingly, Oklahoma's Petition for Special Redress was approved.

### Refund Applications

*Apco Oil Corp./Clarinda Oil Co., 1/20/88, RF 83-53*

The DOE issued a Decision and Order concerning an Application for Refund filed by Clarinda Oil Company. Clarinda, a motor gasoline and distillate fuel oil a retailer, sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corp. Based on an evaluation of the firm's refund claim using the three-step competitive disadvantage methodology, the DOE found that Clarinda was injured by Apco's alleged overcharges in sales of motor gasoline. The DOE granted Clarinda a refund for motor gasoline of $45,294, representing $29,384 in principal plus $15,910 in interest. That portion of Clarinda's claim which was based upon its distillate fuel oil purchases was denied.

*Apco Oil Corporation/Hunter Oil Company 1/22/88, RF83/52*

The DOE issued a Decision and Order concerning an Application for Refund filed by Hunter Oil Company. Hunter sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corporation. Hunter is a motor gasoline and distillate fuel oil retailer which purchased these products from Apco during 56 months of the period covered by the Apco consent order. The DOE granted Hunter's refund application based upon standards established in *Apco Oil Corp.*, 12 DOE ¶ 85,149 (1985). The refund granted to Hunter totaled $9,551 ($6,196 in principal, plus $3,355 in interest).

*Apco Oil Corp./Leo's Enterprises, Inc., 1/22/88, RF83-1*

The DOE issued a Decision and Order concerning an Application for Refund filed by Leo's Enterprises, Inc., a motor gasoline and distillate fuel oil reseller. Leo's sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corp. Based upon its evaluation of Leo's refund claim, the DOE determined that the applicant was injured by Apco's alleged overcharges in sales of motor gasoline. The DOE granted Leo's a refund for motor gasoline of $76,216, representing $49,444 in principal plus $26,772 in interest. The DOE further determined that Leo's failed to demonstrate that it was injured by Apco's pricing practices as they related to distillate fuel oil.

*Diamonds Ranch, 1/21/88, RF272-2178*

The Department of Energy (DOE) issued a Decision approving an Application for Refund in the Crude Oil Subpart V refund proceedings. The claimant was a farmer who used sales receipts to compute the amount of petroleum products used during the August 1973 to January 1981 period. Because the claimant calculated the amount of grease in pounds rather than gallons, DOE converted the total pounds of grease into gallons. Because the claimant relied on the end-user presumption, he was not required to demonstrate injury. A total of $21 was approved in this Decision and Order.

*Gulf Oil Corporation/Calfee Oil Company, 1/21/88, RF40-3591*

The DOE issued a Decision and Order concerning an Application for Refund filed by Calfee Oil Company (Calfee), a Gulf consignee agent. In an attempt to rebut the presumption that Gulf consignee agents were not injured by Gulf's alleged overcharges, Calfee claimed in its application that it actually purchased Gulf products and that the individual retailers with whom Calfee did business received commissions for the gallons of products sold at the retail outlets. The DOE determined, however, that the invoices submitted by Calfee showed that the individual retailers, not Calfee, had paid Gulf for the products. Because Calfee had failed to

submit any evidence that supported its assertion that it purchased products from Gulf, it could only receive a refund through an Assignment of Refund rights to Calfee by the individual retailers. Calfee submitted such Assignments of Refunds executed by several individual retailers and was therefore deemed eligible to receive a Gulf refund based on these retailers purchases from Gulf. Accordingly, the DOE granted Calfee a refund of $258, representing $202 principal plus $56 interest.

*Marathon Petroleum Co./R.J. Oil Co., Inc., 1/21/88, RF250-1567, RF250-1568*

This Decision and Order concerns two Applications for Refund filed by R.J. Oil Co., Inc. in the Marathon Petroleum Company refund proceeding. R.J. Oil claimed that it purchased 30,768,755 gallons of refined products from Marathon during the Marathon consent order period. Since the applicant did not claim a refund in excess of $5,000, the DOE granted its request without requiring a showing of injury. The refunds granted in this Decision were $5,000 in principal plus $714 in accrued interest.

*Marvin Wehrman, et al., 1/19/88, RF272-2026 et al.*

The Department of Energy (DOE) issued a Decision approving thirty-eight Applications for Refund in the Crude Oil Subpart V refund proceedings. The thirty-eight claimants were farmers who used either the USDA formula or their own records to derive the number of gallons of petroleum products they used during the August 1973 to January 1981 period. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $931 was approved in this Decision and Order.

*Mobil Oil Corporation/Amos Post Company, 1/19/88, RF225-9206, RF225-10931*

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Amos Post Company (Amos), a reseller of Mobil refined petroleum products. In its refund application, Amos elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). With regard to the first part of a showing of injury, Amos submitted banks of unrecouped increased product costs based on annual, financial and gallonage data. The DOE found that this data was insufficiently detailed and did not provide a sound basis for the firm's refund application. However, applicants who attempt to demonstrate injury and fail are nevertheless eligible for a refund under the presumptions outlined in *Mobil*. Therefore, because Amos has submitted the information necessary for a refund under the level-of-distribution presumption, the DOE granted Amos a refund based on its purchases of Mobil motor gasoline. The total refund granted to Amos was $8,673, representing $7,001 in principal plus $1,672 in interest.

*Mobil Oil Corp./Fremont Airport, Inc., 1/21/88, RF225-6231*

The DOE issued a Decision and Order granting Fremont Airport, Inc. (Fremont), a refund from the Mobil Oil Corporation consent order fund. Fremont applied as an end-user and a retailer of 159,146 gallons of aviation gasoline which it purchased directly from Mobil during the Mobil consent order period. Under the presumptions established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), end-users who were directly supplied by Mobil are entitled to a refund equivalent to the amount of their documented purchase volumes times 100 percent of their per gallon volumetric refund amount. Retailers who purchased products other than motor gasoline from Mobil and whose total claim is $5,000 or less are also eligible for a refund equivalent to the amount of their documented purchase volumes times 100 percent of the volumetric refund amount without making a detailed showing of injury. The total amount of Fremont's refund approved in this Decision and Order is $83 ($67 principal plus $16 interest).

*Mobil Oil Corporation/Heater Oil Company Inc., 1/21/88, RF225-9218, RF225-9219*

The DOE issued a Decision and Order granting an Application for refund from the Mobil Oil Corporation escrow account filed by Heater Oil Company, Inc., a reseller of Mobil refined petroleum products. In its refund application, Heater elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by Heater, the DOE determined that the Mobil motor gasoline purchased by the firm during the consent order period was purchased at prices consistently higher than market average prices. The DOE concluded that Heater was therefore eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline. However, because the firm received a refund greater than $5,000 for its purchases of motor gasoline, the DOE determined that Heater was ineligible for a refund based on its purchases of Mobil middle distillates. The total refund granted to Heater was $49,708, representing $40,126 in principal plus $9,582 in interest.

*Standard Oil Co. (Indiana)/Iowa et al., 1/20/88, RQ251-408 et al.*

The DOE issued a Decision approving second-stage refund plans filed by the States of Iowa and Tennessee. In its application, Iowa proposed to spend its remaining share of Standard Oil Co. (Indiana) funds and its entire allotment of Vickers Energy Corp. funds for five projects: An energy management program for non-profit organizations; an alternative fuels program; an energy conservation marketing program; installation of energy-efficient ventilation controls at a regional medical center; and weatherization of low-income housing. In Tennessee's application, the State proposed to use its share of Standard Oil Co. (Indiana) (Amoco II), National Helium Corp., Charter Co., Perry Gas Processors, and Coline Gasoline Corp. second-stage monies to fund six projects: a park and ride program; a ridesharing promotion program; a vanpool assistance program; a transportation services program for the elderly; a fossil fuel audit program for small businesses; and an energy efficiency seminar program for small businesses. The DOE found that each of the projects proposed by Iowa and Tennessee would promote energy conservation and provide restitution to injured consumers of refined petroleum products. Accordingly, Iowa was granted $287,432 in *Amoco* monies and was authorized to receive $72,984 in *Vickers* monies when and if those funds are made available to the States. Tennessee was granted a total of $949,230 in second-stage refund monies of the projects proposed in its application.

*Vernon Grubb et al., 1/20/88, RF272-919 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 37 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The sum of the refunds granted in this Decision was $1,416. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

*The Southland Corporation, 1/21/88, RF270-28*

The Department of Energy (DOE) issued a Decision and Order concerning a Motion for Reconsideration of a September 25, 1987 dismissal of an Application for Refund filed by the Southland Corporation (Southland) in the Surface Transporters' proceeding. Southland's initial application for a refund on behalf of its Manufacturing and Distribution Group (Manufacturing Group) had been dismissed as void, *ab initio*, because the firm: (i) had impermissibly altered the waiver essential to its claim; and (ii) had already been approved for a refund from another M.D.L. 378 escrow account. In its Motion, Southland asserted that the alteration to the waiver was not material because the Manufacturing Group was separate and distinct from the firm's Transportation Group that had received the first refund. Thus, it claimed, it was entitled to a second refund under *Union Pacific Railroad Co.*, 16 DOE ¶ 85,526 (1987) (*Union Pacific*). Upon reconsideration, the DOE determined that the Manufacturing Group was not a separate legal identity entitled to a refund under *Union Pacific*. Thus, Southland's alteration of the waiver was material and mandated dismissal of the firm's Surface Transporters refund application. Therefore, the DOE determined that the Motion for Reconsideration should be denied.

*Contract Freighters, Inc., 1/21/88, RF270-2515*

The Department of Energy (DOE) issued a Supplemental Order modifying a Decision and Order which granted refunds to a number of applicants in the Surface Transporters refund proceeding. *C.F. England & Sons, Inc.*, 16 DOE ¶ 85,465 (1987) (*C.F. England*). In the Supplemental Order, DOE

found, *sua sponte*, that the volume approved for one of the applicants in *C.F. England*, Contract Freighters, Inc. (RF270-1913) (Contract Freighters), should be modified. The volume previously approved was based on Contract Freighters' own direct purchases, and did not include volumes purchased by the firm's owner-operators for which Contract Freighters was liable for reimbursement. The DOE held that companies such as Contract Freighters are eligible for refunds based on fuel cost reimbursement contracts. *Food Haulers, Inc.*, 16 DOE ¶ 85,605 (1985). The DOE therefore modified *C.F. England* to increase the volume approved for Contract Freighters from 417,653 gallons to 14,074,474 gallons.

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Cairo-Durham Central School | RF225-6183 |
| | RF225-6184 |
| Central Maine Power Co | RF225-4737 |
| | RF225-4738 |
| Friendly Service Oil Co | RF225-10907 |
| | RF225-10908 |
| | RF225-10917 |
| Lakewood Oil Co., Inc | RF225-10932 |
| | RF225-10933 |
| | RF225-10934 |
| Larco, Inc | RF225-10935 |
| Kirkland Oil Co | RF225-10936 |
| | RF225-10937 |
| | RF225-10938 |
| Peoples Oil Co | RF225-6642 |
| | RF225-6643 |
| | RF225-6644 |
| Sears, Roebuck and Co | RR270-29 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 10, 1988.

[FR Doc. 88-5871 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decision and Order; Period of February 1 Through February 12, 1988

During the period of February 1 through February 12, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

March 10, 1988.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*Commonwealth of the Northern Mariana Islands, Saipan, Northern Marinana Islands, KEE-0151*

The Commonwealth of the Northern Mariana Islands (CNMI) filed an Application for Exception from the provisions of 10 CFR Parts 450 and 455. The exception request, if granted, would waive the requirement that buildings in the CNMI eligible for grants under the Department of Energy's Institutional Conservation Program be heated or cooled by mechanical means. On February 10, 1988, the Department of Energy issued a Proposed Decision which determined that the exception request be granted.

[FR Doc. 88-5872 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decision and Order; Week of February 16 Through February 19, 1988

During the week of February 16 through February 19, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

March 10, 1988.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*Delgado Oil Company, Pinedale, Wyoming, KEE-015.*

Delgado Oil Company filed an Application for Exception from the requirment that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Delgado to be permanently exempt from filing Form EIA-782B. On February 18, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied because Delgado had not demonstrated that it was experiencing a hardship or inequity as a result of the requirement that it file the Form.

[FR Doc. 88-5873 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of The Secretary

### Secretary's Commission on Nursing; Advisory Commission Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following national advisory body scheduled to meet during the month of April 1988:

*Name:* Secretary's Commission on Nursing

*Date:* April 4, 1988

*Time:* 9:00 a.m.

*Place:* Room 703–727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. 20201

*Purpose:* The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

*Agenda:* The agenda for this meeting will include consideration of issues associated with the recruitment and retention of nurses. There will be a panel presentation on ways in which the environment of nursing practice can be modified to improve both staff retention and quality of care.

Agenda items are subject to change as priorities dictate. Anyone wishing information regarding the Commission should contact the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245–0409

Dated: March 14, 1988.

**John Busa,**

*Administrative Offices, Secretary's Commission on Nursing.*

[FR Doc. 88–5981 Filed 3–16–88; 8:45 am]

BILLING CODE 4150–04–M

## Food and Drug Administration

**[Docket No. 88F–0053]**

### The Dow Chemical Co.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-octene-1 copolymers as adhesives in multilayer structures intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4066) has been filed by The Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of ethylene-octene-1 copolymers as adhesives in multilayer structures intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 10, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–5818 Filed 3–16–88; 8:45 am]

BILLING CODE 4160–01–M

**[Docket No. 88N–0101]**

### Drug Export; POLYTRIM Brand Trimethoprim Sulfate and Polymyxin B Sulfate Ophthalmic Solution

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Burroughs Wellcome Co. has filed an application requesting approval for the export of the human drug POLYTRIM Brand Trimethoprim Sulfate and Polymyxin B Sulfate Ophthalmic Solution to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFN–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, North Carolina 27709, has filed an application requesting approval for the export to Canada of the drug POLYTRIM Trimethoprim Sulfate and Polymyxin B Sulfate Ophthalmic Solution. This drug is indicated in the treatment of suface ocular bacterial infection, including the acute bacterial conjunctivities and blepharo conjunctivitis caused by susceptible strains of the following organisms (1) *Staphylococcus aureus;* (2) *staphylococcus epidermidis;* (3) *streptococcus pneumoniae;* (4) streptococcus viridans; (5) *haemophilus influenzae;* and (6) *pseudomonas aeruginosa.* The application was received and filed in the Center for Drug

Evaluation and Research on March 1, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 28, 1988 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 8, 1988.

**Daniel L. Michels,**

*Director, Office of Compliance; Center for Drug Evaluation and Research.*

[FR Doc. 88-5885 Filed 3-16-88; 8:45 am]

BILLING CODE 4160-01-M

## Office of Human Development Services

**[Program Announcement No. 13631-88-2]**

## Availability of Grants To Determine the Feasibility and Desirability of Developing a Nationwide Information and Referral System for Persons With Developmental Disabilities; Correction

**AGENCY:** Administration on Development Disabilities (ADD), Office of Human Development Services (OHDS), HHS.

**ACTION:** Notice of correction of the date comments are due from state single points of contact.

**SUMMARY:** This document corrects a date cited in the program announcement, published February 25, 1988, in the **Federal Register** (53 FR 5643), regarding the date comments are due from State Single Points of Contact on applications for projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities.

**FOR FURTHER INFORMATION CONTACT:** Judy Moore, Projects of National Significance Coordinator, at (202) 245-1961.

**SUPPLEMENTARY INFORMATION:** On February 25, 1988, the Administration on Developmental Disabilities published in the **Federal Register** an announcement of the availability of funds and request for applications for projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. (53 FR, pages 5640-5645.) On page 5643 of the announcement, a correction is required in the date comments are due from State Single Points of Contact (SPOCS).

SPOCs have 60 days from the date applications are due in the Office of Human Development Services (OHDS) (April 11, 1988) to comment on these applications for financial assistance. The February 25, 1988 program announcement incorrectly cited the date that SPOC comments are due as April 25, 1988.

Therefore, the OHDS is correcting page 5643, column 2, first sentence to read: Comments are, therefore, due no later than June 10, 1988.

Approved: March 14, 1988.

**Sydney Olson,**

*Assistant Secretary for Human Development Services.*

[FR Doc. 88-5893 Filed 3-16-88; 8:45 am]

BILLING CODE 4130-01-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NM-010-08-4410-08]**

## Farmington Resource Area, NM; Public Hearing

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meetings and a hearing.

**SUMMARY:** The Bureau of Land Management (BLM) announces special meetings and a special hearing to be held on the land ownership adjustment issue as it relates to lands south of the "fourth standard parallel north" as presented in the proposed Farmington Resource Management Plan. This issue is a concern to the City of Gallup and others in that general area.

**DATE:** The special meetings will be held at the following locations in Gallup, New Mexico:

*Date, Time and Meeting Location*

April 8, 1988, 7:00 p.m.-9:00 p.m.; Kennedy Middle School, 600 Boardman Drive

April 9, 1988, 9:30 a.m.-11:30 a.m.; Kennedy Middle School, 600 Boardman Drive

The special hearing will be held at the following location in Gallup, New Mexico:

*Date, Time and Hearing Location*

April 9, 1988, Starting at 1:30 p.m.; Kennedy Middle School, 600 Boardman Drive

**SUPPLEMENTARY INFORMATION:** The purpose of the meetings scheduled is to make information available, including maps to the general public, to discuss concerns and answer questions regarding the land ownership adjustment issue presented in the Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) in this area. These will be informal meetings.

The purpose of the public hearing scheduled is to allow the public to make formal comments regarding the land ownership adjustment issue presented in the PRMP/FEIS for the area around Gallup. At this hearing, oral and written comments will be received into the record. A hearings officer will preside at the hearing, and each person who signs up to speak will be allowed 10 minutes to give their statement for the record. A court reporter will be present to record all comments. Speakers will be registered at the door prior to the hearing. If a large number of speakers are registered, the hearing officer may set a time limit of less than 10 minutes for each speaker so that all who have registered may have the opportunity to speak. In addition, written comments will be accepted if postmarked on or before April 18, 1988. Written comments must be sent to the following address: RMP Team Leader, BLM, 1235 La Plata Highway, Farmington, New Mexico 87401.

The comments received at the hearing will be given to the New Mexico State Director of the BLM for consideration prior to approving the Farmington RMP.

**FOR FURTHER INFORMATION CONTACT:** For more information or to obtain copies of the Draft RMP/EIS or the PRMP/FEIS, contact Ron Fellows, Area Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401 (505) 327-5344.

**Larry L. Woodard,**

*State Director.*

Dated: March 11, 1988.

[FR Doc. 88-5812 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-FB-M

[MT-070-07-4322-01-ADVB]

## Montana; Butte District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Butte District, Interior.

**ACTION:** Change of date for meeting.

**SUMMARY:** The Butte District Advisory Council meeting scheduled for March 16 and 17 (February 25, 1988, 53 FR 5651) will be held instead on Wednesday and Thursday, April 6 and 7. The meeting will begin at 10:00 a.m. on April 6.

**FOR FURTHER INFORMATION CONTACT:** James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

March 9, 1988.

**James A. Moorhouse,**

*District Manager.*

[FR Doc. 88-5837 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-040-08-4322-12]

## Ely District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that a meeting of the Ely District Advisory Council will be held on Tuesday and Wednesday, May 24 and 25, 1988.

The Advisory Council will tour the Wilson Creek Allotment located in the southeastern portion of the Schell Resource Area.

An evening orientation meeting will be held on May 24, 1988, at 6:00 p.m. at the Lincoln County Courthouse in Pioche, Nevada. The tour participants will leave Pioche at 8:00 a.m. on May 25, 1988.

Members of the public are invited to accompany the advisory council, but must provide their own transportation and lunch.

**ADDRESS:** Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

**FOR FURTHER INFORMATION CONTACT:** Terry Dailey, (702) 289-4865.

Date: March 7, 1988.

**Kenneth G. Walker,**

*District Manager.*

[FR Doc. 88-5838 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ 020-41-5410-10-ZAEF; A-23225]

## Mineral Interest Application; Arizona

**ACTION:** Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Peter R. Makaus, Suzan Makaus and RCJ Corporation have applied to purchase the mineral estate described as follows:

**Gila and Salt River Meridian, Arizona**

T. 5 N., R. 2 E.
Sec. 31, Lots 1, 2, W½SE¼SW¼, SE¼SE¼SW¼.

Containing 109.70 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, March 3, 1988, whichever occurs first.

**Henri R. Bisson,**

*District Manager.*

Date: March 10, 1988.

[FR Doc. 88-5839 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-08-4212-13; CA-19806]

## Realty Action; Proposed Land Exchange in San Benito County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; proposed land exchange of public and private lands in San Benito County, CA.

**SUMMARY:** This notice is to advise the public that the Hollister Resource Area of the Bureau of Land Management and Mr. Charles F. McCullough, Jr. are proposing a land exchange.

**SUPPLEMENTARY INFORMATION:** The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Mt. Diablo Meridian, California**

T. 15 S., R. 9 E.,
Sec. 1, SW¼NW¼, N½SW¼, W½NW¼SE¼, W½SW¼SE¼, SE¼SW¼SE¼, S½SE¼SE¼;
Sec. 2, SE¼NE¼;
Sec. 11, S½NW¼, SW¼;
Sec. 14, NE¼NW¼.

Containing 590.00 acres, more or less.

In exchange for these lands, the Federal Government will acquire tracts of non-Federal lands in San Benito County from Mr. Charles F. McCullough, Jr., described as follows:

**Mt. Diablo Meridian, California**

T. 17 S., R. 11 E.,
MS 5062;
MS 5251;
MS 5252;
MS 5253;
MS 5957;
MS 5958.

Containing 288.081 acres, more or less.

The purpose of the exchange is to acquire the non-Federal lands to provide access to isolated Federal lands and enhance their management. The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Cultural Stipulation: A covenant as follows will be placed within the title in order to protect the archeological site.

**Covenant**

The property described below is hereby conveyed subject to the conditions, restrictions, and limitations herein set forth, which shall be considered as covenants running with the property which the grantee, his heirs, successors and assigns covenant and agree, in the event that the property is sold or otherwise disposed, will be inserted in the conveyance or other:

T. 15S., R. 9E., M.D.M.
Sec 1: SWSWSE

1. No physical change to the archaeological site CA-SBN-153 as shown and described on the archaeological site record on file with the California Archaeological Sites Inventory or its surface covering shall be made or altered without the prior

written approval of the California State Historic Preservation Officer.

2. Scientific investigations (not relating to the recovery of data to mitigate the adverse effects of development of the property) at one or more of the sites involving removal of archaeological materials or disturbance of those materials shall be permitted only if the investigations are consistent with the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (46 FR, Vol. 190, September 19, 1983, pp. 44716–44742) or subsequent contemporary Federal guidance, with the written approval of the California State Historic Preservation Officer of the research design for the investigation(s) and providing that the patentee, his heirs and assigns have granted permission for the investigation.

3. The patentee, his heirs and assigns will contact the California State Historic Preservation Officer and arrange for an inspection of the site subsequent to any scientific investigations. The purpose of the inspection will be to determine the necessity of retaining the protection provided by this covenant at CA–SBN–183.

4. The patentee, his heirs and his assigns shall not permit the removal or collection of archaeological artifacts from any of the protected sites, except as provided for in a scientific investigation as described in Number 2 above.

5. The above restrictions shall be binding on the parties hereto, their heirs, successors, and assigns in perpetuity or until CA–SBN–153 no longer retains the scientific data for which it is significant. Such determination shall be made by or in concurrence with the California State Historic Preservation Officer.

6. In the event of a violation of the above restrictions, any affected party may institute a suit to enjoin such violation or for damage by reason of any breach thereof.

The acceptance of the delivery of this patent shall constitute conclusive evidence of the agreement of the patentee to be bound by the conditions, restrictions, and limitations and to perform the obligations herein set forth.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, for a period of two years. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

Detailed information concerning the exchange, including the environmental assessment, is available at the Hollister Resource Area Office, 402 Hill Street, P.O. Box 365, Hollister, California 95024–0365.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Hollister Resource Area Office at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

Dated: March 14, 1988.

**David Howell,**

*Area Manager.*

[FR Doc. 88–5820 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–40–M

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**[CO–070–08–4212–13; C–38487]**

## Exchange of Lands in Garfield County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Exchange of Lands.

**SUMMARY:** Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

**SUPPLEMENTARY INFORMATION:** The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Selected Public Lands**

*Disposal Parcel 18—146.96 Acres*

T. 7 S., R. 94 W.
Sec. 17: Lot 4, SW¼NW¼, W½SW¼

*Disposal Parcel 158—318.07 acres*

T. 7 S., R. 95 W.
Sec. 35; S½S½
Sec. 36; Lots 13, 14, 15, and 16

*Disposal Parcel 159—162.43 acres*

T. 7 S., R. 95 W.
Sec. 25: Lots 13 and 14
Sec. 36: Lots 3 and 4

**Offered Private Land**

*Parcel O–1—40.00 Acres*

T. 7 S., R. 94 W.
Sec. 15: SW¼NW¼

*Parcel O–2—313.14 Acres*

T. 7 S., R. 94 W.
Sec. 11: Lots 3 and 4, S½NW¼, SW¼

*Parcel O–3—257.08 Acres*

T. 7 S., R. 94 W.
Sec. 1: SW¼SW¼, SE¼SW¼, S½SW¼ SE¼
Sec. 12; Lots 3 and 4, S½NW¼

Any adjustments to offered private land to equalize values would be made in T. 7 S., R. 94 W., Sec. 15, W½NW¼.

These 627.46 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Joan L. Savage.

In the proposal, 610.22 acres of offered private land with public values would be exchanged for 627.46 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final apprasial of the lands, the acreage will be adjusted or money will be used to equalize the exchange values.

**Terms and Conditions**

The following reservations would be made in patent issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land use, including grazing leases, unless waived.

4. The reservation of oil and gas lease C–27872.

5. The reservation of oil and gas lease C–05173.

6. The reservation of right-of-way C–36806 for public access.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws and the mineral leasing laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

**Barry C. Cushing,**

*Acting District Manager, Grand Junction District.*

[FR Doc. 88–5783 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–JB–M

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**[NV–930–08–4212–24; N–47788]**

## Realty Action; 20 Year Nonrenewable Lease in Lincoln County, NV

The following described land has been determined to be suitable for leasing by non-competitive procedures under section 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 173.

**Mount Diablo Meridian, Nevada**

T. 6 S., R. 57 E.
Sec. 25, NW¼SW¼NW¼NW¼.
Aggregating 2.5 acres.

The purpose of the lease is to authorize improvements which have been located on the site for approximately fifteen years. The improvements resulted from the overdevelopment of a Section 4 Grazing Permit granted in 1973 to D–4 Enterprise, Inc., c/o Steve Medlin.

The lease will be offered at fair market rental to Steve and Glenda Medlin as a nonrenewable, nonassignable, noninheritable, 20 year lease. The land is not required for any conflicting federal purpose. The lease is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments this realty action will become the final determination of the Department of the Interior.

Date: March 8, 1988.

**Ben F. Collins,**

*District Manager, Las Vegas, NV.*

[FR Doc. 88–5781 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–HC–M

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**[NM–940–08–4220–11; NM NM 52387, NM NM 013679]**

## Proposed Continuation of Withdrawals; NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes that part of two existing land withdrawals for the Navajo Unit, Colorado River Storage Project, continue until December 31, 2060. This is the estimated life of the Project. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

**DATE:** Comments should be received by June 15, 1988.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM New Mexico State Office, 505–988–6554.

The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Order of December 6, 1915, and Director's Order of March 22, 1956, be continued until December 31, 2060, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are located within the following described townships:

**New Mexico Principal Meridian**

T. 31 N., R. 5 W.
T. 30 N., R. 6 W.
T. 31 N., R. 6 W.
T. 32 N., R. 6 W.
T. 30 N., R. 7 W.
T. 31 N., R. 7 W.
T. 32 N., R. 7 W.
T. 30 N., R. 8 W.
T. 31 N., R. 8 W.

The areas described aggregate 17,533 acres in San Juan and Rio Arriba Counties.

The purpose of the withdrawals is for protection, operation, and maintenance of project facilities of the Navajo Unit of the Colorado River Storage Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

The Project consists of four withdrawals. Notices for continuation of two withdrawals were published in the **Federal Register** on June 20, 1985, and January 11, 1985. The four withdrawals comprising the Project will be consolidated into one final public land order.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

**Monte G. Jordan,**

*Associate State Director.*

Dated: March 8, 1988.

[FR Doc. 88–5780 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–FB–M

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**[AZ–020–08–4212–13; A–18992]**

## Realty Action; Public Land Exchange; Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction notice.

**SUMMARY:** The public land description contained in the notice of termination/

realty action published on Thursday, December 31, 1987, in **Federal Register** document 87–29988, page 49526, should read as follows:

**Gila and Salt River Meridian, Arizona**

T. 14 N., R. 20 W.,
Section 4, lots 5, 8, and 9;
Section 9, lots 2 and 3, SW¼NW¼, N½N½N½NW¼SW¼,N½S½N½N½NW¼SW¼.

Containing 142.0 acres, more or less.

**FOR FURTHER INFORMATION CONTACT:** Mike Berch, Kingman Resource Area, (602) 757–3161.

Dated: March 10, 1988.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 88–5840 Filed 3–16–88; 8:45 am]

**BILLING CODE 4310–32–M**

## Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–725785

Applicant: Gordon H. Brandenburger, Anaconda, MT.

The applicant requests a permit to import the personal sport-hunted trophy of a bontabok (*Damaliscus dorcas dorcas*), culled from the herd of M. G. Wienand in Bedford, Republic of South Africa, for the purpose of enhancement of propagation.

PRT–720880

Applicant: Cactus by Dodie, Lodi, CA.

The applicant requests a permit to sell in interstate commerce and export for sale in foreign commerce the following species of artificially propagated cacti: *Coryphantha minima, C. sneedii* var. *leei, C. sneedii* var. *sneedii, Echinocereus engelmannii var purpureus, E. fendleri var. kuenzleri, E. reichenbachii* var. *albertii, E. triglochidiatus* var. *inermis* and *E. viridiflorus* var. *davisii.*

PRT–725867

Applicant: Ferdinand Ferco Hantig, Las Vegas, NV.

The applicant requests a permit to import one captive born male tiger (*Panthera tigris*) which was purchased from the Bellewaerde Park, Belgium. The applicant will display the tiger in a manner designed to educate the public with regard to the species' ecological role and conservation needs. The applicant anticipates future exports and reimports of this tiger for exhibition purposes.

PRT–725772

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import three male and three female captive hatched Fiji banded iguanas (*Brachylophus fasciatus*) from Mrs. Ivy Watkins, Orchid Island, Suva, Fiji Islands, for the purpose of introducing new bloodlines to their existing group.

PRT–725729

Applicant: Thomas William Cianciola, Glendale, WI.

The applicant requests a permit to purchase 10–20 captive born adult masked bobwhite quail (*Colinus virginianus ridgwayi*) from three U.S. breeders for the purpose of captive propagation of the species.

PRT–725559

Applicant: Charles Pankow, Gibsonton, FL.

The applicant requests a permit to reexport one female Asian Elephant (*Elephas maximus*) born in the wild to Mike Hackenberger, Bowmanville Zoo, Bowmanville, Ontario, Canada for the purpose of enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: March 14, 1988.

**R. K. Robinson,**

*Chief, U.S. Office of Management Authority.*

[FR Doc. 88–5905 Filed 3–16–88; 8:45 am]

**BILLING CODE 4310–55–M**

### Marine Mammal Permit Applications

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.* the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

File No. PRT–690715

Applicant Name: U.S. Fish & Wildlife Service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

*Type of Permit:* Scientific Research
*Name of Animals:* Walrus (*Odobenus rosmarus*)—60
*Summary of Activity to be Authorized:* The applicant proposes to attach flipper tags, permanently mark by hot branding, attach VHF radio transmitters and attach satellite-linked transmitters to Pacific walruses for purposes of scientific research to aid in the understanding of the population dynamics of the species. The walruses must be immobilized for attachment of the satellite-linked transmitters. The immobilization drugs to be tested are telezol and demerol/seritol. The immobilization drugs and techniques will be tested on walruses on a terrestrial haul-out prior to their use on females on pack ice. Tagged specimens will be monitored and, if the radio-tags or satellite transmitters malfunction, will be recaptured for refitting with another package. Biological samples will be salvaged from walruses found dead and from walruses that die as a result of the activities carried out under the proposed permit. Further biological samples will be imported for comparison with material from walruses from Alaskan waters.
*Source of Marine Mammals for Research:* Take on west coast of Alaska and the Bering and Chukchi seas. Import biological samples from Greenland, Canada, Norway and the Soviet Union.
*Period of Activity:* April 1, 1988 through December 31, 1990.

File No. PRT–723414

Applicant Name: J.H. Walker, Director, British Columbia Ministry of Environment and Parks, Parliament Buildings Wildlife Branch, Victoria, B.C. V8V 1X5, Canada.

*Type of Permit:* Scientific Research
*Name of Animals:* Up to 40 Northern sea otters *Enhydra lutris lutris.*
*Summary of Activity to be Authorized:* The applicant proposes to take up to 40 northern sea otters for the purpose of reestablishing a sea otter colony in the Queen Charlotte Islands, British Columbia, Canada.
*Source of Marine Mammals for Research:* Prince William Sound, Alaska
*Period of Activity:* February 15, 1989 to November 15, 1989.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to

the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Dirctor, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street NW., Washington, DC.

Dated: March 14, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 88–5906 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–55–M

## Minerals Management Service

### Development Operations Coordination Document

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Conoco Inc., Unit Operator of the Green Canyon Block 184 Federal Unit Agreement No. 14–08–0001–20257, has submitted a DOCD describing the activities it proposes to conduct on the Green Canyon Block 184 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 7, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region; Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2659.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 9, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88–5787 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–MR–M

### Development Operations Coordination Document

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Walter Oil & Gas Corporation, Unit Operator of the Vermilion Block 164 Federal Unit Agreement No. 14–08–0001–7800, has submitted a DOCD describing the activities it proposes to conduct on the Vermilion Block 164 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 7, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2660.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 9, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88–5786 Filed 3–16–88; 8:45 am]

BILLING CODE 4310–MR–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–273]**

### Certain Cellular Mobile Telephones and Subassemblies and Component Parts Thereof; Commission Decision Not To Review Initial Determination Terminating Investigation on the Basis of a Consent Order; Issuance of Consent Order

**AGENCY:** International Trade Commission.

**ACTION:** Termination of investigation on the basis of a consent order; issuance of a consent order.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation on the basis of a consent order.

Termination of the investigation on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

**FOR FURTHER INFORMATION CONTACT:** Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1092.

**SUPPLEMENTARY INFORMATION:** On February 10, 1988, the presiding ALJ issued an ID terminating the investigation. The ID granted the joint motion of complainant Motorola, Inc. and all respondents to terminate the investigation on the basis of a consent

order, consent order agreement and settlement agreement. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 9, 1988.

[FR Doc. 88-5774 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-237]**

## Certain Miniature Hacksaws; Nonreview of Initial Advisory Opinion

**AGENCY:** International Trade Commission.

**ACTION:** Notice of nonreview of initial advisory opinion.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review an initial advisory opinion issued by the presiding administrative law judge (ALJ) finding that a certain miniature hacksaw sought to be imported by Disston Company, Inc. does not infringe claims 1-9 of U.S. Letters Patent 3,756,298. The miniature hacksaw is therefore not covered by the exclusion order and the cease and desist orders issued by the Commission in January 1987 at the conclusion of the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Tim Yaworski, Esq., Office of the General Counsel, telephone 202-252-1096. Hearing impaired invididuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-252-1810.

**SUPPLEMENTARY INFORMATION:** At the conclusion of the above-captioned investigation, the Commission issued an order excluding from entry into the United States certain minature hacksaws that infringed U.S. Letters Patent 3,756,298 (the '298 patent) and a cease and desist order directed to respondent Disston Inc. (Disston). Later, at the request of Disston, the Commission instituted advisory opinion proceedings to determine whether a hacksaw sought to be imported by Disston is covered by the previously-issued exclusion order and cease and desist order. The Commission has completed the advisory opinion proceedings and determined not to review the presiding ALJ's initial advisory opinion that Disston's miniature hacksaw does not infringe claims 1-9 of the '298 patent.

The Commission's action was taken pursuant to 19 U.S.C. 1337 and 19 CFR 211.54(b).

Copies of the initial advisory opinion and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

By order of Commission.

Issued: March 9, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88-5775 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-267]**

## Certain Minoxidil Power, Salts and Compositions for Use in Hair Treatment; Commission Order Remanding to the Presiding Administrative Law Judge an Initial Determination Terminating Respondent ACIC Canada, Inc., on the Basis of a Proposed Consent Order

On November 27, 1987, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 35) granting a joint motion (Motion No., 267-30) of complainant The Upjohn Company (Upjohn) and respondent ACIC Canada, Inc. (ACIC), to terminate this investigation as to ACIC on the basis of a proposed consent order. The Commission investigative attorney (IA) filed a public interest statement in support of the motion.

The ID was served on November 27, 1987, and notice of is receipt by the Commission was published in the **Federal Register** on December 3, 1987. 52 FR 46009. On December 29, 1987, the Commission decided to review that ID as to the appropriateness of the certification requirements in paragraph 1 of the proposed consent order. 53 FR 292 (Jan. 6, 1988). Written submissions were received from Upjohn, the IA, former respondent S.S.T. Corporation, and the U.S. Customs Service.

The proposed consent order would permit ACIC to export minoxidil to the United States only if the import documents included a certification that the minoxidil was for specified uses. The purpose of the certification seems to be to permit entry of ACIC minoxidil for the specified uses should an exclusion order be issued in this case. However, the Customs Service is correct in objecting to the proposed certification provisions on the ground that it is unnecessary, since the Commission, not Customs, will enforce the consent order. Further, Customs "considers the presentation of unnecesary documentation at the time of entry as administratively burdensome and directly contrary to Customs' pressent mission to reduce the amount of paperwork required for the entry of merchandise."

A simple undertaking by ACIC should be sufficient in the consent order. Certification is more properly addressed in the context of issuing any exclusion order in this case.

In view of the foregoing, *it is hereby ordered:*

The subject ID (Order No. 35) is remanded to the presiding ALJ for further proceedings consistent with this order.

**Kenneth R. Mason,**

*Secretary (For the Commission).*

Date: March 9, 1988.

[FR Doc. 88-5772 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-267]**

## Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Commission Decision To Remand to the Presiding Administrative Law Judge an Initial Determination Terminating one Respondent on the Basis of a Consent Order

**AGENCY:** International Trade Commission.

**ACTION:** Remand to the presiding administrative law judge (ALJ) of initial determination terminating respondent ACIC Canada, Inc. on the basis of a proposed consent order.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to remand to the presiding ALJ an initial determination (ID) (Order No. 35) issued by the ALJ terminating respondent ACIC Canada, Inc. in the above-captioned

investigation on the basis of a proposed consent order.

**FOR FURTHER INFORMATION CONTACT:** Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1092.

**SUPPLEMENTARY INFORMATION:** On November 27, 1987, the presiding ALJ issued an ID terminating the investigation with respect to ACIC Canada, Inc. The ID granted the joint motion of complainant The Upjohn Company and ACIC Canada, Inc. to terminate the investigation with respect to ACIC on the basis of a proposed consent order and settlement agreement. Subsequently, the Commission determined to review the ID with respect to the question of the appropriateness of requiring certifications in consent orders, such as that set out in paragraph 1 of the proposed consent order.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.56.

Copies of the Commission's Order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 9, 1988.

[FR Doc. 88–5773 Filed 3–16–88; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–267]**

## Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Commission Decision Not To Review Initial Determination Finding Three Respondents in Default

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of an initial determination finding three respondents in default.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) finding three respondents in default pursuant to Commission rule 210.25.

**FOR FURTHER INFORMATION CONTACT:** Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1092.

**SUPPLEMENTARY INFORMATION:** On February 2, 1988, the presiding ALJ ordered respondents Chem Tri State, Inc., Life Essentials, and Ocean Chemicals to show cause why they should not be found in default. No responses were received. Consequently, the ALJ issued the subject ID (Order No. 51) finding these respondents in default under Commission rule 210.25. No petitions for review or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 9, 1988.

[FR Doc. 88–5776 Filed 3–16–88; 8:45 am]

BILLING CODE 7020–02–M

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## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31209]**

## The Indiana Rail Road Co. Exemption; Trackage Rights; Illinois Central Gulf Railroad Co.

Illinois Central Gulf Railroad Company has agreed to grant local trackage rights to The Indiana Rail Road Company between milepost 109 and Milepost 114, in Sullivan County, IN, to provide rail service to a single rail user. The trackage rights are to become effective on March 8, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–5463 Filed 3–16–88; 8:45 am]

BILLING CODE 7035–01–M

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## DEPARTMENT OF JUSTICE

## Amended Consent Decree Under Clean Air Act to Enjoin Discharge of Air Pollutants, Boise Cascade Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that an amended consent decree in *United States v. Boise Cascade Corporation,* Civil Action No. 1244, was lodged with the United States District Court for the Northern District of New York on February 29, 1988. The amended consent decree establishes a compliance program for Boise Cascade Corporation in Beaver Falls, New York, to bring the facility into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* and New York State SIP opacity and particulate emission regulations, 6 NYCRR §§ 227.3 and 227.4 relating to the discharge of air pollutants.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the amended consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of justice, Washington, DC 20530 and should refer to *United States v. Boise Cascade Corporation,* D.J. Ref. No. 90–5–2–1–486A.

The amended consent decree may be examined at the office of the United States Attorney, District of New Jersey, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the amended consent decree may be

obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check for $1.50 ($.10 per page reproduction cost) made payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5792 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Order Pursuant to Clean Water Act; Baton Rouge, LA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of Baton Rouge and State of Louisiana,* Civil Action No. 88-191A, was lodged with the United States District Court for the Middle District of Louisiana on March 3, 1988. The proposed Consent Decree concerns the control and prevention of illegal discharges of pollutants into the Mississippi River by the City of Baton Rouge, Louisiana from its three wastewater treatment plants known as the North Plant, the Central Plant and the South Plant.

The decree provides that the City of Baton Rouge shall pay a civil penalty of $750,000.00 to settle the United States' claims of violations of its National Pollutant Discharge Elimination System ("NPDES") permits in violation of Section 309 of the Clean Water Act, 33 U.S.C. 1319. The decree further provides that the City of Baton Rouge shall construct at each plant facilities enabling each plant to comply with the requirements of its NPDES permit and the Clean Water Act and to ensure against future illegal discharges of pollutants into the river.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. The City of Baton Rouge,* and D.J. reference # 90-5-1-1-2769.

The proposed Consent Decree may be examined at the office of the United States Attorney, Second Floor, 352 Florida Street, Baton Rouge, Louisiana 70801, at the Region VI office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1716, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00, payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 88-5788 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Addendum to Partial Consent Decree Under Clean Water Act to Enjoin Discharge of Water Pollutants; East Rutherford, NJ, et al.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that an addendum to the partial consent decree in *United States v. Joint Meeting—Rutherford, East Rutherford, Carlstadt; Borough of Rutherford, New Jersey; Borough of East Rutherford, New Jersey; Borough of Carlstadt, New Jersey, State of New Jersey,* Civil Action No. 84-2744(SA), was lodged with the United States District Court for the District of New Jersey on December 30, 1987. The addendum to the partial consent decree establishes a compliance program for the Rutherford, Bergen County, New Jersey sewage treatment facility owned and operated by defendants, Joint Meeting—Rutherford and the Boroughs of Rutherford, East Rutherford, and Carlstadt, to bring the facility into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its National Pollutant Discharge Elimination System ("NPDES") permit, relating to the discharge of pollutants into navigable waters of the United States.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the addendum to the partial consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Joint Meeting—Rutherford, East Rutherford, Carlstadt, et al.,* D.J. Ref. No. 90-5-2-1-2152.

The addendum to the partial consent decree may be examined at the office of the United States Attorney, District of New Jersey, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the addendum to the partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a certified check in the amount of $1.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5793 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; General Motors Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States v. General Motors Corporation, et al.,* Civil Action No. 87-464-CMW, was lodged with the United States District Court for the District of Delaware March 9, 1988. The Consent Decree concerns cost recovery in regard to the Harvey & Knotts hazardous waste site located in New Castle County, Delaware. The complaint in this action alleged that certain parties, including Harvey & Harvey, Inc., contributed to the contamination of the site. The Consent Decree provides that Harvey & Harvey, Inc. will reimburse the United States an amount up to $350,000, plus interest, over a ten year period for past and future response costs incurred by the federal government in relation to the site.

Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States v. General Motors Corporation, et al.,* D.J. Ref. No. 90-11-2-34A.

The Consent Decree may be examined at the Office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Room 5110, Wilmington, Delaware 19801; at the Region III office to the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107; and the Environmental Enforcement Section, Land and Natural Resources Division,

Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check payable to "Treasurer, United States of America" for $1.80 (10 cents per page) to cover the costs of copying.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5813 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree; Harrison, AR, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on February 16, 1988, a proposed consent decree in *United States v. City of Harrison, Arkansas and The State of Arkansas,* Civil Action No. 88-3007, was lodged with the United States District Court for the Western District of Arkansas. This consent decree settled a lawsuit filed February 16, 1988, pursuant to Section 309 of the Clean Water Act, (the "Act"), 33. U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against the City of Harrison, Arkansas (the "City"). The complaint alleged, among other things, that a municipal wastewater treatment plant owned and operated by the City was discharging pollutants into navigable waters in excess of the limits set forth in the City's National Pollutant Discharge Elimination System ("NPDES") permit. The complaint alleged that these unauthorized discharges constituted violations of section 301 of the Act, 33 U.S.C. 1311.

Under the terms of the proposed consent decree, the City will make improvements to its wastewater treatment plant that will allow it to attain and maintain compliance with all the terms and conditions of its NPDES permit. The decree requires the City to complete all construction by March 9, 1989, and to attain and maintain compliance with all terms and conditions of its NPDES permit by April 1, 1989. The decree includes interim effluent limits that are to remain in effect from the date the decrce is entered until April 1, 1989, at which time the City shall comply with the final effluent limits of its NPDES permit. The proposed decree also calls for stipulated penalties against the City for failure to meet any of the deadlines set by the decree or failure to meet any of the effluent limitations set by the decree. In addition, the proposed consent decree requires the City to pay a civil penalty of $20,000 with respect to the violations of the Act alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. All comments should refer to *United States v. City of Harrison, Arkansas, and The State of Arkansas,* D.J. Ref. 90-5-1-1-2947.

The consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Quinton Farley, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (211) 767-2129

United States Attorney's Office

Contact: Willaim M. Cromwell, Assistant United States Attorney, Western District of Arkansas, P.O. Box 1524, Fort Smith, Arkansas 72902, (501) 783-5125

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044-7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice. When requesting a copy of the proposed decree, please enclose a check for copying costs in the amount of $1.20 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5794 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Water Act; Jersey City, NJ

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 23, 1988, a proposed consent decree in *United States of America v. City of Jersey City* (consolidated with *United States of America v. City of Hoboken, et al.,* Civ. No. 79-2030) was lodged with the United States District Court for the District of New Jersey. The proposed consent decree settles the United States' claims under the Clean Water Act against the City of Jersey City, New Jersey, the Jersey City Sewerage Authority ("JCSA"), the City of Union City, and the Hudson County Utilities Authority relating to discharges from two Jersey City sewage treatment plants without providing secondary level treatment, in violation of applicable permit requirements. The decree also settles similar claims of the Interstate Sanitation Commission against the same defendants.

The proposed consent decree requires Jersey City and JCSA to complete work currently underway to connect their sewerage system to the secondary wastewater treatment facility operated by the Passaic Valley Sewerage Commissioners in Newark, New Jersey, and to divert all sewage flows in their system to that facility by December 31, 1988. The decree also requires (1) payment of $500,000 to the United States in settlement of its civil penalty claims, (2) compliance with interim effluent limitations until the diversion is completed, and (3) various operating improvements and repairs to the existing Jersey City treatment plants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Jersey City,* D.J. Ref. 90-5-1-1-2460.

The proposed consent decree may be examined at the offices of the United States Attorney, Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.80 (10 cents per page

reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 88-5789 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Air Act; the Pillsbury Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 11, 1988, a proposed Consent Decree in *United States v. The Pillsbury Company,* Civil No. 86-18-W was lodged with the United States District Court for the Southern District of Iowa. The proposed Consent Decree concerns a complaint filed under Section 110 of the Clean Air Act, 42 U.S.C. 7410, that alleged violations of the Iowa State Implementation Plan ("SIP") for control of fugitive dust at Pillsbury's Red Oak, Iowa facility. The Consent Decree requires defendant to implement specific measures to reduce fugitive dust emissions including enclosing the shed at the truck dumping location and covering the open hatches in the rail cars at the rail loading location. The defendant is also required to pay a civil penalty of $14,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. The Pillsbury Company,* DOJ Ref. No. 90-5-2-1-878.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, E. First and Walnut Street, Des Moines, Iowa, 50309, and at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5791 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Water Act; Schlage Lock Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 4, 1988, a proposed consent decree in *United States v. Schlage Lock Company,* Civil Action No. 87-K-1078, was lodged with the United States District Court for the District of Colorado. The proposed consent decree resolves a judicial enforcement action brought by the United States against Schlage Lock Company ("Schlage") for violations of the Clean Water Act.

The proposed consent decree requires Schlage to demonstrate and maintain compliance with the general pretreatment regulations in 40 CFR Part 403 and the metal finishing pretreatment regulations in 40 CFR Part 433. Schlage is required to monitor and sample its effluent discharges and to submit monthly reports of those samples to the United States Environmental Protection Agency ("EPA"). Schlage is also required to submit quarterly reports to EPA on the status of a proposed new treatment facility. The consent decree provides for stipulated penalties in the event Schlage violates any of the monitoring or reporting requirements or the discharge limitations in 40 CFR Part 433. Finally, the consent decree requires Schlage to pay a civil penalty of $120,000 within 30 days of the entry of the decree by the Court.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Schlage Lock Company, D.J. Ref. 90-5-1-1-2880.*

The proposed consent decree may be examined at the office of the United States Attorney, Federal Building, Suite 1200, 1961 Stout Street, Denver, Colorado 80294, and at the Region VIII office of the United States Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5784 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Settlement Stipulation; Smith International, Inc., et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on February 29, 1988, a proposed Stipulation and Agreement to Settle in *In re: Smith International, Inc., et al.,* was lodged with the United States District Court for the Central District of California. The settlement is in connection with a proof of claim filed by the Department of Justice on behalf of the Environmental Protection Agency ("EPA") in Smith International's Chapter 11 bankruptcy reorganization proceedings.

The United States filed a proof of claim in Smith's bankruptcy on March 31, 1987, regarding costs incurred by EPA under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, at the Operating Industries, Inc. landfill ("OII") in Monterey Park, California. The proof of claim stated that EPA had incurred costs of $8 million at the OII site at the time the proof of claim was filed. The United States claim against Smith at the OII site is based on evidence that Smith sent hazardous substances for disposal to the site.

The settlement provides that Smith will pay $100,350 of EPA's past costs at the OII site, which represents 1% of EPA's $10.035 million in past costs incurred at the site up to the time of the settlement agreement. Smith will also pay 0.65% of EPA's future costs at the OII site, up to a maximum payment of $5 million. EPA also reserves the right to seek 0.65% of costs incurred if it is shown after completion of the remedy that the remedy is not protective of human health and the environment and further work is needed at the site, regardless of whether the $5 million cap has been reached. Smith reserves the

right to challenge EPA's costs on the basis that the costs incurred were inconsistent with the National Contingency Plan. The settlement with Smith does not affect or discharge the liability of any other party at the OII site.

The Department of Justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *In re: Smith International, Inc.*, D.J. Ref. 90-11-3-210.

The proposed settlement stipulation may be examined at the office of the United States Attorney, 312 North Spring Street, Los Angeles, California 90012 and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed settlement stipulation may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement stipulation may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the settlement stipulation should be accompanied by a check in the amount of $1.80 for copying costs ($0.10 per page) payable to "United States Treasurer."

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-5785 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Office of Justice Programs

### Office of Juvenile Justice and Delinquency Prevention; Missing Children's Assistance Act Proposed Program Priorities

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention, Justice.

**ACTION:** Notice of proposed FY 1988 program priorities under the Missing Children's Assistance Act.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for comment a Notice of FY 1988 proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974.

**DATE:** Comments are due on or before May 13, 1988.

**ADDRESS:** Send comments to Verne L. Speirs, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 724-7751.

**FOR FURTHER INFORMATION CONTACT:** Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 724-7655.

**SUPPLEMENTARY INFORMATION:** Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. The proposed funding priorities were established, as required by the Missing Children's Assistance Act, in consultation with the Missing Children's Advisory Board appointed by the Attorney General. The Administrator is hereby announcing these proposed priorities and inviting public comment on them for sixty days.

The new proposed priorities are as follows:

1. *Model Community Program:* The purpose of this program is to design and implement a community organization and planning strategy to guide comprehensive program development focused on missing and exploited children. The program would promote specific programmatic and procedural prototypes to serve this youth population, and suggest organizational, planning and program development strategies to coordinate and concentrate the resources of the juvenile service system to address the issue of the missing and exploited youth, with emphasis on the family and mobilizing volunteers.

2. *Parent/Family Abductions:* This program would address the complex legal issues of child abductions by parents and family members. The strengths and weaknesses in current public and private sector approaches to the problem would be identified. Emphasis would be placed on providing instructional assistance on legal and jurisdictional difficulties in dealing with the problem.

3. *Assistance to Private Voluntary Organizations:* The grants are intended to expand the capacity of private voluntary organizations serving missing and exploited children.

Listed below are programs under section 406 of the Missing Children's Assistance Act that are continuation programs for FY 1988.

**National Study of Law Enforcement Agencies' Policies and Practices Regarding Missing Children and Homeless Youth**

This study describes current law enforcement policies and practices and identifies the most effective law enforcement methods for handling reports and investigating, identifying, and recovering children who may be missing or homeless and at risk of exploitation. It also provides better estimates of the number of cases of missing children reported to law enforcement agencies annually.

**The Child Victim as Witness Research and Development Program**

This study designs, implements, and tests new strategies to be used to improve court policies and practices for handling child victim witnesses.

**Research on the Psychological Consequences of Abduction and Sexual Exploitation**

The purpose of this research is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences of families with missing and exploited children.

**Assistance to State Clearinghouses for Missing and Exploited Children**

This program, administered by the National Center for Missing and Exploited Children, solicits applications from states to assist in the development, coordination and exchange of uniform data with regard to missing children.

Listed below are programs under section 404 of the Missing Children's Assistance Act which have been funded with FY 1987 funds and which are continuing funding priorities for FY 1988.

**The National Center for Missing and Exploited Children**

The National Center for Missing and Exploited Children will continue to (1) operate a national toll-free telephone line by which individuals may report information regarding the location of missing children; (2) provide technical

assistance in the location and recovery of missing children, and in the prevention, investigation, prosecution and treatment of missing and exploited child cases; (3) coordinate public and private programs which locate, recover, or reunite missing children with their legal custodian; and (4) disseminate information about innovative and model missing children's programs, services and legislation. (Section 404(a)(3) 404(b)(1))

### National Incidence Study

This study will continue the development process for obtaining reliable estimates of the number of missing children, profiles of missing children, and the circumstances surrounding the events. (Section 404(b)(3))

Dated: March 11, 1988.

**Diane M. Munson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 88-5821 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workes are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1988.

The petitons filed in this case area available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 7th day of March 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner: Union/Workers/Firm | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Anchor Hocking Industrial Glass Co. (Workers) | Bremen, OH | 3/7/88 | 2/12/88 | 20,498 | Glassware. |
| B.F. Goodrich (Workers) | Akron, OH | 3/7/88 | 2/15/88 | 20,499 | Aircraft Tires. |
| Cooper Industries/Electrical Distribution Products (Workers) | Earlysville, VA | 3/7/88 | 2/25/88 | 20,500 | Electrical Breakers. |
| Control Data Corp., Magnetic Peripherals, Inc. (Workers) | Minnetonka, MN | 3/7/88 | 2/16/88 | 20,501 | Disc Drives. |
| Elliott Co. (Workers) | Scranton, PA | 3/7/88 | 2/29/88 | 20,502 | Turbines, Compressors and Parts. |
| General Electric Co. Austintown Products Div. (IUE) | Austintown, OH | 3/7/88 | 2/19/88 | 20,503 | Filaments. |
| General Motors, BOC Flint (UAW) | Flint, MI | 3/7/88 | 2/22/88 | 20,504 | Auto Assembly, Transmission Components. |
| General Motors BOC Flint Assembly (UAW) | Flint, MI | 3/7/88 | 2/22/88 | 20,505 | Auto Assembly. |
| General Motors, Central Foundry-Gray/Nodular Iron (UAW) | Saginaw, MI | 3/7/88 | 2/22/88 | 20,506 | Engine Components. |
| General Motors, CPC Framingham (UAW) | Framingham, MA | 3/7/88 | 2/22/88 | 20,507 | Auto Assembly. |
| General Motors, Hydramatic—Willow Run ((UAW) | Ypsilanti, MI | 3/7/88 | 2/22/88 | 20,508 | Automatic Transmission. |
| General Motors, Hydramatic—Three Rivers (UAW) | Three Rivers, MI | 3/7/88 | 2/22/88 | 20,509 | Automatic Transmission. |
| General Motors, New Departure Hyatt (UAW) | Sandusky, OH | 3/7/88 | 2/22/88 | 20,510 | Automotive Bearings Products. |
| Fun Footwear Co. (Workers) | West Hazleton, PA | 3/7/88 | 2/22/88 | 20,511 | Plastic Footwear. |
| H.J. Jeffries Truck Line, Inc. (Workers) | Lone Star, TX | 3/7/88 | 2/22/88 | 20,512 | Transport Service. |
| Maidenform (ILGWU) | Edison, NJ | 3/7/88 | 2/22/88 | 20,513 | Ladies Intimate Apparel. |
| Mont-Hard (Workers) | New Braunfels, TX | 3/7/88 | 2/22/88 | 20,514 | Industrial Door Hinges. |
| DNE Corp. (UAW) | Brentwood, TN | 3/7/88 | 2/22/88 | 20,515 | Transmissions for GM Corvettes. |
| Paralled Petroleum Corp. (Workers) | Midland, TX | 3/7/88 | 2/18/88 | 20,516 | Crude Oil and Natural Gas. |
| Sabine Oil Corp. (Workers) | Lee County, KY | 3/7/88 | 2/26/88 | 20,517 | Crude Oil. |
| Southwestern Portland Cement Co. (Workers) | Amarillo, TX | 3/7/88 | 2/25/88 | 20,518 | Cement. |

[FR Doc. 88-5903 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-20,314]**

### Mast Industries, Inc., Andover, MA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Mast Industries, Incorporated, Andover, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20.314; Mast Industries, Incorporated, Andover, Massachusetts (March 4, 1988.)

Signed at Washington, DC this 4th day of March 1988.

**Marvin M. Fooks,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 88-5899 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-30-M

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 29, 1988—March 4, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,374; RTE Corporation, Distribution Transformers Div., Waukesha, WI

TA-W-20,384; MRM Industries, Inc., Meriden, CT

TA-W-20,393; Hussmann/Bastian-Blessing Grand Haven, MI

TA-W-20,388; Brentwood Furniture, Haverhill, MA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,367; Eska Company, Dubuque, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,363; American Trading & Production Corp., Oil & Gas Div., Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,378; VW Federal Credit Union; Youngwood, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,450; Jordache Footwear Co., New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,457; Wire Technical, Inc., St. Paul, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,402; Clarksburg Electro-Plating, Inc., Clarksburg, WV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,441; E.R. Wagner Manufacturing, Hustisford, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,383; Dirigo Lumber Co., Greenville Junction; ME

U.S. imports of softwood lumber decreased in quantity both absolutely and relative to U.S. production 1986 compared with 1985 and in Jan-Sept 1987 compared with the same period one year earlier.

### Affirmative Determinations

TA-W-20,357; Kaiser Cement Corp., Longhorn Plant & Quarry, San Antonio, TX

A certification was issued covering all workers of the firm separated on or after December 11, 1986 and before January 11, 1988.

TA-W-20,304; Philadelphia Gear Corp., King of Prussia PA

A certification was issued covering all workers of the firm separated on or after November 15, 1986.

TA-W-20,390; Courtaulds CPD, Inc., Neward, NJ

A certification was issued covering all workers of the firm separated on or after January 5, 1987 and before january 31, 1981.

TA-W-20,375; Rohm & Hass Tennessee, Inc., Knoxville, TN

A certification was issued covering all workers of the firm separated on or after December 12, 21, 1986.

TA-W-20,382; Bogen Communication, Inc., Ramsey, NJ

A certification was issued covering all workers of the firm separated on or after January 4, 1987.

I hereby certify that the aforementioned determinations were issued during the period February 29, 1988—March 4, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 8, 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 88-5900 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-30-M

## Occupational Safety and Health Administration

### Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656) will meet on March 29 and 30, 1988 in Room C2318, U.S. Department of Labor, Frances Perkins Building, Third Street and Constitution Ave., NW., Washington, DC. The meeting is open to the public and will start at 9:00 a.m.

Agenda items will include a discussion of possible revisions to OSHA construction standards concerning Steel Erection (Subpart R), Concrete and Masonry (Subpart Q), and Hazard Communication, and discussion of OSHA's Voluntary Protection Program and other items concerning the construction industry. Written data, views or documents may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meet ing will be provided to the members of the Committee and will be included in the record of the meeting. Anybody wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue NW., Washington, DC, 20210 Telephone: 202-523-8615.

The official record of the meeting will be available for public inspection and copying at the OSHA Docket Office,

Room N-3670, Frances Perkins Building, Third Street and Constitution Ave. NW., Washington, DC 20210. Telephone 202-523-7894.

Signed at Washington, DC this 11th day of March, 1988.

**John A. Pendergrass,**

*Assistant Secretary.*

[FR Doc. 88-5778 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-26-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 88-26]**

### NASA Advisory Council, History Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee (HAC).

*Date and Time:* March 25, 1988, 9 a.m. to 3 p.m.

**ADDRESS:** NASA Headquarters, Federal Office Building 10B, Room 525, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sylvia D. Fries, Code XH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8300).

**SUPPLEMENTARY INFORMATION:** The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Arthur Norberg, consists of 6 members.

This meeting will be closed to the public from 2:30 p.m. to 3 p.m. for a discussion of the qualifications of a candidate for membership. Such a discussion would invade the privacy of the candidate and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 20 persons, including Committee members and other participants. Visitors will be requested to sign a visitor's register. It is imperative that the meeting be held on this date to accommodate the schedules of the key participants.

*Type of Meeting:* Open—except for a closed session, as noted in the agenda below.

*Agenda:*

March 25, 1988:

9 a.m.—Introductory Remarks

9:15 a.m.—Report on NASA Advisory Council (NAC) Meeting

9:30 a.m.—Report of the Director, NASA History Office

11:30 a.m.—Discussion of Current Program

1 p.m.—Prospects and Issues

2:30 p.m.—Nomination of New Member (HAC). (This portion of meeting will be closed.)

3 p.m.—Adjourn.

March 11, 1988.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 88-5815 Filed 3-16-88; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL CAPITAL PLANNING COMMISSION

### Guidelines and Submission Requirements for the Installation of Microwave Antennas on Federal Property in the National Capital Region

**AGENCY:** National Capital Planning Commission.

**ACTION:** Final Guidelines and Submission Requirements.

**SUMMARY:** On November 18, 1987, the National Capital Planning Commission (NCPC) published Proposed Guidelines and Submission Requirements for the Installation of Satellite Antennas on Federal Property in the National Capital Region (52 FR 44237); No comments were received as the direct result of the publication of these draft Guidelines in the **Federal Register.** However, following the elapse of the 30-day comment period, the NCPC did receive communications from the CIA and the Department of the Navy. The views expressed by these parties were considered by the NCPC in the preparation of the finalized Guidelines. The NCPC reviewed the draft Guidelines at its January 7, 1988 meeting and made the following changes:

1. Substituted the word "microwave" for "satellite" wherever it appeared in the Guidelines. This change was made to eliminate any confusion regarding the NCPC's intent to review both satellite and terrestrial microwave antenna installations.

2. Added language regarding the multiple use of antennas by adjacent Federal facilities to minimize the impact of multiple antennas.

3. Added language to indicate that any existing antenna that is moved or relocated must comply with the submission requirements of the Guidelines.

The Guidelines, with the above modifications, were adopted by the NCPC on January 7, 1988.

**DATE:** March 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Rody, Director, Planning Services Division, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576 or by telephone at 202/724-0179.

**Reginald W. Griffith,**

*Executive Director.*

The National Capital Planning Commission finds that certain microwave antennas may adversely impact the aesthetics of the National Capital Region and the health and welfare of its population. Therefore, in order to minimize the visual impacts of microwave antennas on the skyline of the Nation's Capital and on the general appearance of Federal facilities and to protect the public from any potential adverse radio frequency bio-effect impacts from transmitting microwave antennas, the National Capital Planning Commission is providing the following Guidelines and Submission Requirements to be used by Federal agencies in the National Capital Region in the preparation and submission of plans for antenna installations. (The National Capital Region includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, Prince William Counties, and the independent cities within the outer boundaries thereof in Virginia; and the District of Columbia).

(a) Prior to the installation of any microwave antenna on Federal property in the National Capital Region, Federal agencies shall submit (pursuant to section 5 of the National Capital Planning Act of 1952, as amended; section 5-432, D.C. Code, in the District of Columbia; and as appropriate, Section 4 of the International Center Act of 1968, as amended) all such installation proposals to the National Capital Planning Commission for review and comment. Approval by the NCPC of such installations will be limited to five years. This time period may be increased to 10 years at the NCPC's discretion on sites outside the

Monumental Core [1] and surrounding lands and designated Historic Districts.

(1) Specific Submission Requirements:

(i) A statement of need—justifying the size of the antenna and other appropriate data regarding the particular installation consistent with security limitations.

(ii) Site plan and building elevations (for antennas mounted on a building) showing the form, dimensions, and location of the antenna(s).

(iii) Construction drawings showing the proposed method of installation.

(iv) Description of the texture and color of materials to be used.

(v) Screening plan—including proposed materials, color and texture for rooftop installations. For ground-level installations also include the number, species, and size of trees or shrubs to be used as a screen.

(vi) Site line studies illustrating the extent to which the proposed antenna(s) will be visible from the surrounding streets and public open spaces. These studies should include all alternatives considered.

(vii) A review of alternatives considered to meet the telecommunications needs of the agency.

(2) General Criteria Applying to Antenna Installations:

(i) No rooftop microwave antenna in the National Capital Region should exceed the height of the roof of any permitted penthouses on Federal buildings.

(ii) Materials used in the construction of antennas and their mountings should not be bright, shiny, or reflective and should be of a color that blends with the surrounding building materials.

(iii) Any masts or towers should be non-combustible, corrosion resistant, and protected against electrolytic action.

(iv) All antennas should be adequately grounded to protect against a direct lightning strike.

(b) Federal agencies may request an extension of the approval prior to expiration of the original approval. The request should be accompanied by a certification that:

(1) The original installation is structurally sound and continues to meet all the submission requirements;

(2) Clearly establishes the continued need for the installation; and

(3) Technological advances have not offered any alternatives that permit the elimination of the antenna or reduction in its size to minimize the visual impacts.

Any antenna installation which does not receive re-certification by the NCPC should be dismantled and removed as soon as possible after the expiration of the NCPC's approval period.

(c) To the extent possible, Federal agencies should anticipate the need for antennas on all new buildings and design such buildings in such a fashion as to screen the needed antennas in a manner appropriate to the design of each building.

(d) Rooftop antennas on existing Federal buildings or ground level installations in the National Capital Region should be designed and installed in a manner that minimizes or eliminates their visual impacts on adjacent properties or public rights-of-way. Where appropriate to the character of a building, retro-fitting to screen antennas not accommodated in original building designs and plans should be considered. Various architectural solutions are possible for retro-fitting buildings to screen antennas installations. The architectural style, orientation, available rooftop space, and structural character of a building, as well as the heights of neighboring buildings, are all important considerations in the retro-fit option selected. A variety of materials, including plastic, fiberglass, and glass can be used to screen or obscure antennas. Any materials that do not block the passage of the radio frequency signals are suitable as a screen.

(e) Reasonable precautions are necessary in locating and operating transmitting microwave antennas, because of potential adverse radio frequency bio-effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site specifc basis. All submissions to the NCPC for a transmitting microwave antenna should be accompanied by an environmental assessment. The environmental assessment shall include, among other considerations, an estimate of the electromagnetic radiation levels at 10, 50, 100, 500, 1,000 and 2,000 feet from the installation in milliwatts/centimeter squared and the safeguards proposed to protect the public from any potential adverse bio-effects. A manufacturers certification as to electromagnetic radiation at the above distances and a statement that the proposed antenna meets all American National Standards Institute (ANSI) and Environmental Protection Agency (EPA) current radio frequency emission standards should be made part of the environmental assessment. The NCPC will continue to seek state-of-the-art information on health and human safety issues and shall apply that information and resulting awareness of issues in reviewing and approving antenna installations.

(f) All agencies responsible for antenna installations existing at the time of the adoption of these guidelines are required to apply for approval of all such installations within five years after the adoption of these Guidelines and Submission Requirements.

(g) These guidelines are general in nature and convey the spirit of the concerns regarding potential adverse visual and/or bio-effect impacts to be mitigated. Each installation is a special case and the appropriateness of the solutions selected to reduce the visual impacts will, in a large measure, be determined by the particular location or locations chosen for the installation and the architectural character of the building. These guidelines provide general criteria to be applied on a case-by-case basis. It is the intent of these Guidelines to apply to any existing microwave antenna(s) which are moved or relocated to another location on the Federal facility and to encourage the joint use of microwave antennas wherever possible.

(h) The NCPC will, in its review of proposals for microwave antenna installations, be particularly concerned with the agency's statement of need, justification of antenna size, and measures employed to minimize the visual impacts of the proposed installation. The NCPC will continue to review all microwave and terrestrial microwave antenna proposals, on a case-by-case basis, as a modification to previously approved site and building plans.

[FR Doc. 88-5841 Filed 3-16-88; 8:45 am]

BILLING CODE 7520-02-M

[1] The Monumental Core as defined in the Federal Facilities element of the "Comprehensive Plan for the National Capital."

## NATIONAL SCIENCE FOUNDATION

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer*: Herman G. Fleming, (202) 357-9520.

*OMB Desk Officer*: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title*: Research Opportunities for Women (telephone survey).
*Affected Public*: Individuals.
*Response/Burden Hours*: 600 responses; 300 burden hours.
*Abstract*: Survey will gather views of several groups (e.g., ROW Awardees, declinees, "Mainstream: award winners and declinees) to assess initial impacts of Research Opportunities for Women program and investigate several questions related to program's importance to the targeted group, its development, and its management.

Dated: March 11, 1988.

**Herman G. Fleming,**

*NSF Clearance Officer.*

[FR Doc. 88-5860 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Ecology; Meeting

The National Science Foundation announced the following meeting:

*Name:* Advisory Panel for Ecology.
*Date and Time:* April 6-8, 1988—8:30 a.m. to 5:00 p.m. each day.
*Place:* Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
*Type of Meeting:* Part Open.
Open 04/06, 9:00 a.m. to 12:00 noon.
Closed 04/06, 1:00 p.m. to 5:00 p.m. and 04/07 & 04/08, 8:30 a.m. to 5:00 p.m.
*Contact Person:* Dr. Patrick J. Webber, Program Director, Ecology (202) 357-9734, Room 215, National Science Foundation, Washington, DC 20550.
*Summary Minutes:* May be obtained from the Contact Person at the above address.
*Purpose of Meeting:* To provide advice and recommendations concerning support for research in ecology.
*Agenda:* Review and evaluation of research proposals and projects as part of the selection process of awards. Open: 04/06/88, 9:00 a.m. to 12:00 noon. Discussion to include long-range planning in ecology.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88-5861 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies
Dates and Times:
April 7, 1988—9:00 a.m.-5:00 p.m.
April 8, 1988—8:30 a.m.-5:00 p.m.
Place: Carnegie Mellon University, Information Technology Center Conf. Room, University Computing Center, 4910 Forbes Avenue, Pittsburgh, PA 15213
Type of Meeting:

*Open*

April 7, 1988—9:00 a.m.-5:00 p.m.
April 8, 1988—9:30 a.m.-5:00 p.m.

*Closed*

April 8, 1988—8:30 a.m.-9:30 a.m.
Contact Person: Mr. Donald R. Mitchell, National Science Foundation, Phone: 202/357-9717
Summary of Minutes: May be obtained from Donald R. Mitchell
Purpose of Meeting: To review progress and provide advice and recommendations concerning NSF support and oversight of EXPRES and related technologies
Agenda: The open session will be focused on the progress to date and planned future milestones of the EXPRES program. The closed session will discuss pending funding actions.
Reason for Closing: The pending funding actions being discussed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the projects. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), the Government in Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88-5862 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Integrative Neural Systems Program; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Integrative Neural Systems Program
*Date and Time:*
April 6 and 7 1988; 9:00 a.m.-5:00 p.m.
April 8, 1988; 9:00 a.m.-12:00 p.m.
*Place:* National Science Foundation, 1800 G Street, NW., Washington, DC, Room 543.
*Type of Meeting:* Part Open—
Closed 04/06—9:00 a.m. to 5:00 p.m.
Closed 04/07—9:00 a.m. to 5:00 p.m.
Open 04/08—9:00 a.m. to 11:00 a.m.
Closed 04/08—11:00 a.m. to 12:00 Noon
*Contact Person:* Dr. Nathaniel G. Pitts, Program Director, Integrative Neural Systems Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7040.
*Minutes:* May be obtained from contact person listed above.
*Purpose of Meeting:* To provide advice and recommendations concerning support for research in integrative neural systems.
Agenda:
Open—General discussion of the current status and future plans of the Integrative Neural Systems Program.
Closed—To review and evaluate research proposals as part of the selection process for awards.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88-5863 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Plant Science Centers; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Plant Science Centers.
*Date and Time:* April 9 and 10, 1988—8:30 a.m. to 5:00 p.m. each day.
*Place:* Rooms 540, 543, 540B and 523, 1800 G Street, NW., Washington, DC 20550.
*Type of Meeting:* Closed.
*Contact Person:* Dr. Robert Rabin, Senior Advisor for Biotechnology, Directorate for Biological, Behavioral and Social Sciences, (202) 357-9894, Room 212, National Science Foundation, Washington, DC 20550.

*Summary Minutes:* May be obtained from the Contact Person at the above address.

*Purpose of Meeting:* To provide advice and recommendations concerning support for the establishment of Plant Science Centers and the research to be conducted in each.

*Agenda:* Review and evaluation of research proposals and projects as part of the selection process of awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88-5864 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Systematic Collections

The National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Systematic Collections

*Date:* April 8, 1988, 8:30 a.m.–4:30 p.m.

*Place:* National Science Foundation, 1800 G Street, NW., Room 523, Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Nancy Parezo, Associate Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7804.

*Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning support for preservation of Systematic Anthropological Collections.

*Agenda:* To review and evaluate research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88-5865 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## United States Antarctic Program Safety Review Panel; Meeting

The National Science Foundation announces the following meeting:

*Name:* United States Antarctic Program (USAP) Safety Review Panel

*Date:* April 4 and 5, 1988

*Time:*

10:00 a.m. to 5:00 p.m. on April 4

9:00 a.m. to 5:00 p.m. on April 5

*Place:* Omni Georgetown Hotel, (Smithsonian Room), 2121 P St., NW; Washington, DC

*Type of Meeting:* Open

*Contact Person:* Mr. Russell L. Schweickart, Chairman, USAP Safety Review Panel, Room H-217, National Science Foundation, Washington, DC 20550, Telephone (202) 634-4892

*Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* Review safety issues as they relate to the U.S. presence in Antarctica.

*Agenda:* Review of Panel's recent trips to Antarctica and discussion of Panel's report on safety issues.

*Special Note:* The above meeting replaces the scheduled meeting of March 10 & 11, 1988, which had to be cancelled at the last moment due to the illness of the Chairman.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88-5866 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force followed by a public hearing on April 7, 1988, followed by a meeting of the Task Force on April 8, 1988.

### Public Hearing

*Name:* Task Force on Women, Minorities, and the Handicapped in Science and Technology

*Date:* April 7, 1988

*Time:* 9:30 a.m. to 5:00 p.m.

*Place:* Radcliffe College, Cronkhite Graduate Center, 6 Ash Street, Cambridge, MA 02138

*Purpose:*

The Task Force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education and social aspects.

Testimony will be heard in three ways: (1) Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; (2) summary statements from the floor of three-minute duration accompanied by any longer written statements or materials for the record; and (3) written testimony submitted to the Task Force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology, 330 C Street, SW., Washington, DC 20201.

The public hearing will be followed by a discussion of the testimony by the Task Force members April 8, 1988.

### Meeting

*Name:* Task Force on Women, Minorities, and the Handicapped in Science and Technology

*Date:* April 8, 1988

*Time:* 9:00 a.m. to 12:00 noon

*Place:* Radcliffe College, Cronkhite Graduate Center, 6 Ash Street, Cambridge, MA 02138

*Type of Meeting:* Open

*Purpose:* The purpose of the Task Force on Women, Minorities and the Handicapped is to:

—Examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally-assisted research programs;

—Coordinate existing federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers;

—Suggest cooperative interagency programs for promoting such employment;

—Identify exemplary programs in the state, local or private sectors; and

—Develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

*Agenda:* Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education and Social Aspects, as well as other business of the Task Force.

All meetings and public hearings of the Task Force are open to the public and all proceedings will be recorded and will be available at the Task Force offices.

**Sue Kemnitzer,**

*Executive Director, (202) 245-7477.*

March 1, 1988.

[FR Doc, 88-5867 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Public Hearing in Anchorage, AK; Aircraft Accident

In connection with its investigation of the accident involving Ryan Air Services, Inc., Flight 103, N401RA, at the Homer Airport, Homer, Alaska, on November 23, 1987, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on April 6, 1988, in the Mid Deck Room of the Discovery Ballroom, at the Hotel Captain Cook, 939 West 5th Avenue, Anchorage, Alaska. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, telephone (202) 382-6605.

**Bea Hardesty,**

*Federal Register Liaison Officer.*

March 10, 1988.

[FR Doc. 88-5874 Filed 3-16-88; 8:45 am]

BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50-454, STN 50-455, STN-50-456 and STN 50-457]**

### Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the licenses for the Commonwealth Edison Company (CECo, the licensee) for Byron Station, Units 1 and 2, located in Ogle County Illinois, and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

**Environmental Assessment**

*Identification of Proposed Action:* The proposed amendments would add two radiation monitors in the Technical Specifications for each station and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system. These monitors have been added to assure that the release limits of 10 CFR Part 20 are not exceeded when fluids are discharged from the condensate cleanup system sump and the turbine building fire and oil sump to the circulating water system.

These revisions to the licenses of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, would be made in response to the licensee's application for amendment dated February 18, 1987, as supplemented November 17, 1987, and clarified January 8, 1988.

*The Need for the Proposed Action:* Pursuant to 10 CFR 50.90, the licensee has proposed amendments to Facility Operating Licenses NPF-37 and NPF-66 for Byron Station, Units 1 and 2, respectively and Facility Operating Licenses NPF-72 and NPF-75 for Braidwood Station, Units 1 and 2, respectively. The amendments would add two radiation monitors in the Technical Specifications for each station and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system.

One of the proposed radiation monitors would monitor the discharge from the condensate cleanup system sump. The condensate cleanup system was originally intended to be used for system flushing during startup. However, operating experience has indicated the need to run this system during normal operation. Thus, the potential exists for low level radioactivity in the condensate cleanup system sump.

The other proposed radiation monitor would monitor discharge from the turbine building fire and oil sump. The original plant design for turbine building equipment and floor drains was to collect drain effluent into the oil separator, then route the separated water directly to the radwaste treatment system for processing and release via the release tank. Present operating experience has shown that the water volume is higher than originally anticipated, generating a heavy load for the radwaste treatment system for a negligible reduction in activity release. Therefore, the licensee is proposing to drain the separated water to the fire and oil sump.

*Environmental Impacts of the Proposed Action:* The Commission has evaluated the radiological impact of the proposed amendments and concludes that they meet the acceptance criteria for the process and effluent radiological monitoring instrumentation and sampling systems based on the following regulations and guidance: (1) 10 CFR Part 20, 20.16 as related to radioactivity monitoring of effluents to unrestricted areas; (2) Regulatory Guides 8.8 and 1.21 as related to sampling frequencies, required analyses, instrument alarm/trip setpoints, calibration and sensitivities, gross beta-gama measurements, etc.; (3) 10 CFR Part 50, Appendix 1 as related to the numerical guides for design objectives and limiting conditions for operation to meet the criterion "as low as is reasonably achievable" given in Appendix I; (4) General Design Criterion 60 as related to control releases of radioactive materials to the environment, and (5) Drawings showing how the monitors are located in the effluent release path and describing the actuation logic of the monitors and how the monitors isolate the valves as per NUREG-0472, "Standard Radiological Effluent Specifications for PWR's," Revision 2, February 1980.

The proposed amendments involve a change to a requirement with respect to the installation of use of a facility component located within the restricted area as defined in 10 CFR Part 20. Succinctly, the amendment adds two radiation monitors to the Technical Specifications for each station: one on the condensate cleanup (CP) system sump and the other on the fire and oil sump. Upon detection of unacceptable levels of radioactivity in sump effluent, the monitors are designed to alarm and automatically terminate sump discharge. Monitor setpoints are conservatively selected to ensure that 10 CFR 20.106 limits are not exceeded.

With regard to nonradiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Byron Station, Units 1 and 2" dated April 1982 and in the "Final Environmental

Statement related to the operation of Braidwood Station, Units 1 and 2" dated June 1984, regarding radiological environmental impacts from the plants during normal operation or after accident conditions, are not adversely altered by this action.

*Alternative to the Proposed Actions:* The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

*Alternative Use of Resources:* This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statements related to these facilities.

*Agencies and Persons Consulted:* The NRC staff reviewed the licensee's submittals of February 18, 1987, November 17, 1987 and January 8, 1988; and did not consult other agencies or persons.

*Finding of No Significant Impact:* The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated February 18, 1987, as supplemented November, 1987, and clarified by letter dated January 8, 1988, and the Final Environmental Statements for Byron, dated April 1982, and Braidwood, dated June 1984; which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects.*

[FR Doc 88-5842 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-461]**

## The Illinois Power Co. et al.; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of Appendix J to 10 CFR Part 50 to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees) for the Clinton Power Station, Unit 1 (CPS) located in DeWitt County, Illinois. The exemption was requested by the licensees by letter dated January 13, 1988.

### Environmental Assessment

*Identification of Proposed Action:* The exemption will provide a one-time relief from the 2-year surveillance interval requirement of Section III.D.3 of Appendix J, 10 CFR Part 50, for performing Type C local leak rate tests (LLRTs) for containment isolation valves (CIVs) 1E12-F023, 1E51-F034, 1E51-F035, 1E51-F390, 1E51-F391, 1E12-F061, 1E12-F062, and 1E51-F013. The licensees have proposed to conduct these tests prior to startup from the first refueling outage. This outage, which is currently scheduled to be initiated in January of 1989, must be initiated by no later than February 28, 1989. These tests must be performed prior to when containment integrity needs to be assured following the refueling operation.

*The Need for the Proposed Action:* The end of the initial 24-month testing interval for these eight CIVs is October 21, 1988. With the exception of these eight valves, the licensees either have, or plan to perform the required Type C tests for the CIVs on schedule. Many of the tests will be conducted during the spring 1988 maintenance outage. The licensees have stated that due to plant constraints it is not possible to perform the testing of these eight valves without extending the outage solely for the purpose of these tests.

The licensees have indicated that performing the leak testing on these eight valves will require the removal of the drywell head and the disassembly of the reactor head spray piping to allow installation of a blind flange as an inboard test boundary. Reassembly of the reactor head spray piping will require that a reactor coolant system boundary leakage test be performed in accordance with the ASME Code. The licensees estimate that these tasks would extend the spring 1988 maintenance outage by about one week, and cause additional personnel exposure of approximately one to two Man-Rem.

The first refueling outage is scheduled to be initiated in January of 1989. Drywell head removal and a reactor coolant boundary leakage test will be required during this outage. Performance of the leak tests for these Containment Isolation Valves during this outage would bring the test schedule into alignment with the fuel cycle. Thus, the licensees indicated that the time to perform the required tesfing has been accounted for in planning the first refueling outage. If IP encounters a problem prior to the first refueling outage which entails removal of the drywell head and disassembly of the reactor head spray piping, the required leakage tests will be performed in order to return to full compliance with the regulations.

*Environmental Impacts of the Proposed Action:* The licensees have indicated that the previous Type C LLRTs were performed satisfactorily for the valves covered by the requested exemption. The licensees also indicated that the calculated percentages of the leakage contribution of the subject valves to the allowable leakage limit are small. Further, the licensees have surveyed industry LLRT data for valves of this type and have determined that for all types of valves identified in the requested exemption, the probabilities of a leakage related failure during the 238 day extension period requested were low (0.84% for the worst case). Therefore, the licensees have concluded that the granting of the requested exemption would not present a significantly increased probability of containment leakage other than contemplated in Appendix J.

The Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected containment leakage and that containment integrity would thus be maintained. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action:* Because the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in an outage of considerable duration with attendant costs and would result in an unnecessary loss of power to the grid when the distribution system's need for power is high.

*Alternative Use of Resources:* This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Clinton Power Station, Unit No. 1," dated May 1982.

*Agencies and Persons Consulted:* The Commission's staff reviewed the licensees' request and did not consult other agencies or persons. The State of Illinois was consulted with regard to a related Technical Specification change to the Clinton Power Station Facility Operating License.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated January 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-5843 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-368]**

## Arkansas Power and Light Co.; Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 82 to Facility Operating License No. NPF-6, to Arkansas Power and Light Company, which revised the Technical Specifications for operation of the Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas. The amendment was effective as of the date of its issuance.

The amendment approves changes in the boron concentration in the refueling tank, safety injection tanks, and boric acid makeup tank. The changes provide safety and operational enhancements specifically suited to the use of extended cycle cores.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 21, 1987 (52 FR 48348). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1977.

For further details with respect to this action, see: (1) The applications for amendment dated October 28, 1987, as supplemented by letter dated January 19, 1988, (2) Amendment No. 82 to Facility Operating License No. NPF-6, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 7268). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 11th day of March, 1988.

For the Nuclear Regulatory Commission.

**George F. Dick,**

*Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-5844 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-029]**

## Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would revise the provisions in the Technical Specifications relating to the surveillance testing of the 480-volt emergency bus and the addition of an action statement for the voltage sensors on this bus. The license application for amendment is dated January 5, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be

filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases of each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes as additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

**Richard H. Wessman,**

*Project Director, Project Directorate I-3, Division of Reactor Projects 1/II.*

[FR Doc. 88-5845 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-029]**

## Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would revise the provisions in the Technical Specifications relating to Control Rod Position, a reference to movable incore detectors, which will be deleted and a reference to three-loop operation which will also be deleted. The licensee's applications for amendment are dated December 23, 1987 and January 18, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri) (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after if completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

**Richard H. Wessman,**

*Project Director, Project Directorate I-3, Division of Reactor Projects I/II.*

[FR Doc. 88-5846 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-029]**

## Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would revise the provisions in the Technical Specifications relating to crane travel over the spent fuel pit. The licensee's application for amendment is dated January 15, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

**Richard H. Wessman,**

*Project Director, Project Directorate I–3, Division of Reactor Projects I/II.*

[FR Doc. 88–5847 Filed 3–16–88; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by the Office of Management and Budget

*Agency Clearance Officer:* Kenneth A. Fogash, (202) 272–2142

*Upon Written Request Copy Available from:* Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

**Extension**

*File No. 270–8, Rule 15b1–3*

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980, as amended in 1986, the Securities and Exchange Commission has submitted for extension of OMB clearance Rule 15b1–3 which provides that if a broker-dealer succeeds to or continues the business of a registered broker-dealer, the registration of the predecessor shall remain effective as the registration of the successor for 75 days after the succession provided that an amendment to Form BD is filed by the successor within 30 days after the date of succession. Fifty respondents incur an estimated average of three burden hours to comply with the Rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

March 8, 1988.

[FR Doc. 88–5848 Filed 3–16–88; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 25439; File No. SR–MBS–88–4]**

### Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. In a March 2, 1988 letter, MBSCC amended the proposal to take effect upon submission of the letter pursuant to section 19(b)(3)(A) of the Act. The Commission is publishing this notice to solicit comments on the proposed rule change.

The proposed rule change adds a new group of GNMA coupons to the list of GNMA coupons eligible for conversion to book-entry form. Once converted to book-entry form, the securities will become subject to MBSCC's withdrawal procedures, which limit physical withdrawal except in certain circumstances.[1] For settlements beginning March 21, 1988, the 12.50%–12.99% GNMA coupons will be eligible for conversion to book-entry form.[2]

MBSCC has filed related proposed rule changes for review under the Act. For example, MBSCC previously filed a proposed rule change (File No. SR–MBS–87–2) requesting permanent approval of the withdrawal procedures for certain coupon rates and any others that MBSCC may add by filing at a later date. That proposal currently is under review.[3] MBSCC also filed a proposed

[1] MBSCC's withdrawal procedures implement the Public Securities Association's Good Delivery Guidelines to provide that, for securities converted to book-entry form, physical withdrawals are limited to instances where certificates are legally required to be maintained by a participant or customer outside the depository. Withdrawal requests that satisfy the guidelines must be submitted within appropriate time frames.

[2] At present, GNMA coupons with the following coupon rates have been converted to book-entry form and are subject to the Public Securities Association's Good Delivery Guidelines: 5.50%–7.49% and 13.00%–17.50%.

[3] *See* Securities Exchange Act Release No. 24120 (February 17, 1987) 52 FR 6088 (February 27, 1987).

rule change, effective upon filing, similar to File No. SR-MBS-88-4.[4] That filing (SR-MBS-88-5) and this filing (SR-MBS-88-4) will be effective for 60 days from the date of publication of this notice.

In anticipation of the proposed rule change, MBSCC senior management has completed the installation and testing of expanded computer hardware and software required by larger-than-anticipated increases in participation and trading volume. MBSCC has also assisted Depository Division participants in making necessary changes to their own operating systems. MBSCC believes that with such installation, testing, and modifications, the 12.50%–12.99% GNMA coupons can be implemented in an orderly manner.

MBSCC states that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 ("Act") in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (a) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number (File No. SR-MBS-88-4) and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 10, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-5902 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

[4] *See* File No. SR-MBS-88-5, which is being published simultaneously with the present filing.

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**[Release No. 34-25440; File No. SR-MBS-88-5]**

## Self-Regulatory Organizations; MBS Clearing Corp.; Physical Withdrawal of Securities Eligible for Deposit in MBSCC's Depository Division, Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1988, the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's (MBSCC) procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division. The procedures will be in effect for the period starting on February 15, 1988, and ending 60 days from the date of publication of the notice.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The policy covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guideline. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to obtain or maintain physical possession of the securities.

Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to obtain or maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver for financing purposes the withdrawn securities.

At the present time, GNMA securities with the following coupon rates have been converted to book-entry form and are subject to the PSA guideline: 5.50%–7.49%, 16.00%–17.50%, 14.00%–15.99%, and 13.00%–13.99%. On April 27, 1987, PSA and MBSCC modified the conversion schedule of GNMA securities. For additional coupons, notice will be given of coupons to be designated as specified for book-entry settlement 45 days in advance of the issuance date of new pools of coupons. In addition, MBSCC has recently filed a rule change to convert the 12.50–12.99% GNMA coupons to book-entry form, for settlements beginning March 21, 1988.

In response to concerns raised by various commentators, MBSCC has further revised the withdrawal policy to make it clear that a Participant may make a request to withdraw securities subject to the PSA Good Delivery Guideline if it is legally required to

maintain, as well as obtain, physical possession of securities. The phrase "legally required to obtain or maintain physical possession" is expanded to include those legal requirements imposed by any rule or regulation of any governmental agency, self-regulatory organization as defined in the Securities Exchange Act of 1934 or designated contract market as defined in the Commodity Exchange Act. In addition, the policy has been revised to enable the Participant, or its customer, to obtain securities in time to comply with such legal requirements.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereto will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgate-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgage-backed securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

While written comments have not been generally solicited, MBSCC has submitted responses to comments submitted to the Commission. In response to certain concerns raised by the Chicago Board of Trade regarding the obtaining of GNMA certificates for collateral purposes relating to Collateralized Depository Receipts, MBSCC has made revisions to the proposed rule change discussed in Item 3(a) above.

In a separate rule filing to MBSCC's Depository Division rules (SR-MBS-87-7, submitted July 24, 1987), MBSCC has responded to concerns raised by some commentators regarding the submission of claims under a GNMA or other similar guarantee on behalf of Participants. The Depository Division rules have been amended to make clear that MBSCC, in filing claims for payment under any guarantee, will be acting solely as agent for its Participants, except in certain circumstances, where MBSCC or a third-party lender have made principal and interest advances.

Representatives of PSA and GNMA have had the opportunity to review the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-88-5 and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 10, 1988.

**Jonathan G. Katz,**

*Secretary.*

## Exhibit A—MBSCC Procedure for Physical Withdrawal of Depository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. the Procedure ocovers securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the Guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guideline. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

*Securities Not Yet Subject to Good Delivery Guideline*

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

*Securities Subject to Good Delivery Guideline*

MBSCC will honor requests to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to obtain or maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to obtain or maintain physical possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn. For purposes hereof, a Participant or its customer will be deemed legally required to obtain or maintain physical possession of securities if obligated to do so under any applicable law or any rule or regulation

of any governmental agency, any self-regulatory organization as defined in the Securities Exchange Act of 1934, or any designated contract market as defined in the Commodity Exchange Act (including, in the case of a self-regulatory organization or designated contract market which is a Participant in the Depository, the rules or regulations of such self-regulatory organization or designated contract market).

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC, MBSCC will make the securities available: (a) Seven calendar days from the date of withdrawal request, or (b) on such earlier date as the Participant requesting the withdrawal certifies to MBSCC is necessary to enable the Participant or its customer to comply with any applicable legal requirement. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, a MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 88-5849 Filed 3-16-88; 8:45 am]
BILLING CODE 8010-01-M

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**[Release No. 34-25438; File No. SR-MSRB-87-13]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change of Municipal Securities Rulemaking Board; Disclosure in Connection With New Issues

On October 6, 1987, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-87-13) under 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change amends MSRB Rule G-32 on disclosures in connection with new issues. The Commission published notice of the proposed rule change on November 9, 1987,[1] and received no comments in response.[2]

The proposed rule change would provide an objective definition of "underwriting period" for sole underwritings for purposes of rule G-32 on disclosures in connection with new issues. The proposed amendment would define the underwriting period for sole underwritings to begin upon the first submission of an order for the issue or the purchase of the issue from the issuer by the underwriter, whichever occurs first. It would define the underwriting period to end when both of the following conditions are met: (i) The issuer delivers the securities to the underwriter; and (ii) the underwriter no longer retains an unsold balance of the securities or 21 calendar days elapse after the first submission of an order to the underwriter, whichever occurs first.

Rule G-32 requires all dealers selling new issue municipal securities during the underwriting period to deliver a copy of the official statement for the issue, if one will be prepared, to each customer no later than settlement with the customer. The underwriting period has been defined to begin with the first submission to a syndicate of an order for the purchase of the securities or the purchase of such securities from the issuer, whichever occurs first. The underwriting period is defined to end when the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of the securities, whichever occurs last. This definition is designed to ensure that a sufficient number of investors receive new issue disclosures. The Board previously has interpreted rule G-32 to apply to new issue securities distributed by a sole underwriter ("sole underwritings") notwithstanding the use of the term "syndicate" in the definition of underwriting period and has stated that the number of underwriters is irrelevant to the purposes of the rule. The definition of underwriting period for syndicated underwritings, however, is not appropriate for sole underwritings because a sole underwriter may retain portions of an issue in its inventory long after the delivery of the issue by the issuer and completion of the initial reoffering.

The proposed rule change addresses this problem by providing objective criteria to determine the underwriting period in sole underwritings. The definition in the proposed rule change is consistent with the definition used for syndicated underwritings, with the addition of a 21-day limitation on the underwriting period in cases which the issuer has delivered the issue and the underwriter continues to retain an unsold balance. This objective definition allows dealers to determine their obligations under rule G-32 more easily and would facilitate enforcement of the rule by enforcement agencies.

The Commission believes the proposed rule change is consistent with the Act, particularly section 15B, which provides, in pertinent part, that MSRB rules by designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. By defining the end of underwriting periods for sole underwritings as, at the latest, 21 days after the first order is submitted to the underwriter, the proposal strikes an appropriate balance between ensuring as wide dissemination as possible of information about the issue and the need to provide objective and realistic standards for industry participants to gauge their disclosure responsibilities under Rule G-32.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act tht File No. SR-MSRB-87-13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 9, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-5850 Filed 3-16-88; 8:45 am]
BILLING CODE 8010-01-M

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**[Release No. 34-25437; File No. SR-NASD-88-8]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Mandatory Use of Trade Acceptance and Reconciliation Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] *See* Securities Exchange Act Release No. 25084 (November 2, 1987), 52 FR 43140.

[2] The MSRB also sought comments on the proposal in March, 987 [*see* MSRB Reports, Vol. 7, No. 2 (March 1987)]. The MSRB received three comments and responded to them in its submission to the Commission. *See* Securities Exchange Act Release No. 20584.

**I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would add a new Section 68 to the NASD's Uniform Practice Code to require members of the NASD that are also participants in a registered clearing corporation for purposes of clearing over-the-counter ("OTC") transactions to subscribe to and reconcile all eligible transactions through the NASD's Trade Acceptance and Reconciliation Service ("TARS").

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change was considered by the NASD Board of Governors and the Uniform Practice Committee. Since 1983 the NASD has offered TARS to members that are participants in a registered clearing corporation. TARS is an on-line, trade reconciliation facility that allows both parties to an unresolved trade to view on their NASDAQ terminals uncompared and advisory OTC transactions that are cleared through the facilities of a registered clearing agency and to enter corrections through those terminals. Corrections entered by one side are immediately displayed to the other side and this information is automatically transmitted each day to the clearing corporation, eliminating the need to separately prepare and submit trade correction tickets to the clearing corporation.

Currently TARS has 105 subscribers that account for 86% of all cleared OTC transactions. Since its introduction, TARS has substantially reduced the percentage of uncompared OTC transactions by bringing those transactions into an automated comparison environment. TARS service provides its subscribers with five primary benefits over other methods of trade reconciliation. These are as follows:

1. TARS is available from 8:00 a.m. until 6:00 p.m. (5:00 p.m. for municipal bonds). The 6:00 p.m. deadline gives a subscriber at least five additional hours to complete its securities processing to the clearing corporation. Most clearing corporation submissions must be received by the processing facility by 1:00 p.m.

2. All work processed through TARS provides the subscriber with printer confirmations of its own work and that of the contra party. This allows the subscriber and the contra party, if it is also a TARS subscriber, to be able to conform actions taken between themselves that day, and therefore takes the guess work out of what response, if any, was taken by the contra side, which would otherwise not be known until the following day.

3. All TARS input is validated for trade action, broker relationship, security symbol and CUSIP number. If any of this data is entered incorrectly, the on-line system will automatically provide the subscriber with a reject message. The subscriber at such time can correct the data and thereby prevent the trade from being rejected at the clearing corporation. Rejected trades are reported to subscribers by the clearing corporation on the day following submission.

4. All work entered through TARS can be backed-out, in case of error, prior to the System's close at 6:00 p.m. (5:00 p.m. for municipal bonds).

5. Subscribers have the ability of interrogating the TARS data base by utilizing selective query functions which can extract specific contract sheet information. For example, a subscriber may wish to view only uncompared or advisory trades; or view transactions with a specific firm; or transactions in a particular security. Through the query process this information is readily available.

The NASD believes that requiring all clearing corporation participants to become TARS subscribers and to utilize TARS for reconciling their OTC transactions will further enhance the value of the system by increasing the percentage of OTC transactions which will be reconciled through TARS. The NASD believes that this will be of particular value during periods of high volume when the uncompared rate can increase dramatically. TARS service was operted for extended hours during the days following the October 19, 1987 market break, demonstrating that even in such extreme periods, the rate of uncompared transactions could be quickly reduced to within normal limits through the utilization of the system. The NASD believes that mandatory use will further improve this performance.

The proposed rule change is consistent with section 15A(b)(6) of the Act, which requires that the NASD's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling and facilitating transactions in securities. The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The NASD did not solicit comments on the proposed rule change. It did however solicit comments on a proposed amendment to the NASD By-Laws authorizing the NASD to require the reporting of trade information by members conducting an interdealer OTC business in Notice to Members 87-79. A total of 16 comments were received. Some of the most frequent areas of comments included assertions that the proposals would impose an undue burden on small member firms and would require such firms to incur additional costs, which in some cases could cause the firms to cease doing an OTC securities business. Of the commentators opposing the adoption of the By-Laws amendment, only three are members of a registered clearing agency and therefore only these members would be impacted by the proposed rule change. Subsequent to the comment period, the staff of the NASD Uniform Practice Department contacted each of these firms, all of which indicated that they had not been clear on the implications of the By-Law and did not object to participation in TARS.

The NASD Board of Governors and its Uniform Practice Committee considered the comments and determined that the benefits obtained from requiring TARS participation by all clearing corporation participants could substantially enhance the effectiveness of the system and facilitate further reductions in uncompared trades in OTC securities and thereby substantially outweigh the additional costs to members that are of substantial enough size and

capitalization to be participants in a registered clearing corporation.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-8 and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 9, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-5851 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25429; File No. SR-NYSE-87-47]**

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.; Proposed Increases in Floor Facilities Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C., 78s(b)(1), notice is hereby given that on December 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting certain Floor Facilities fees, as of January 1, 1988.[1]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) *Purpose*—The revenues generated by the Floor Facilities fees increase will be used to defray the expenses of this area. The current Floor Facilities fees do not fully recover the costs of providing the facilities. Increases in projected expenses are anticipated because of continuing demands in the area. The purpose of the proposed rate increase is to continue the process of recapturing the cost of this activity.

(2) *Statutory Basis*—The basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

According to the Exchange, the fees increase is primarily designed to defray the increasing costs of providing floor facilities to its members and other floor facility users. In addition, the Exchange indicates in its filing that the current floor facilities fees do not adequately recover expenses related to provinding such facilities and that the revenues generated from the fees increase will facilitate its efforts to continue to recapture the costs of operating these facilities. We note that the proposed fee increases, for the most part, are modest. Finally, the two new proposed fees are on par with similar fees being imposed for the use of other floor space. In view of the foregoing, the Commission finds that the increase in floor facilities fees is reasonable and consistent with section 6(b) (4) of the Act which provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and paragraph (e) of Securities Exchange Act Rule 19b-4. At anytime within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

[1] The proposal would, among other things, increase both floor privilege fees and specialist floor fees from the current amount of $3,720 to $4,000. In addition, the proposed rule change would effect rate increases for a number of other floor facility fees including booth fees (*i.e.*, option and stock booths, option private line, and order pad privilege and clearance), post fees, fees for regular and special telephone clerk tickets charges for radio paging service, fees for financial vendor services, and member telephone service rates. The proposal also established two new fees. The QT Booth space, with a fee of $1200, provides additional space under the expanded blue room that can be used as additional work space for members. The Option Podium Post with a fee of $4,365, is an optional service for options specialists that includes a desk with electronic hook-ups. The NYSE notes both these spaces are being made available to the membership at their request and are optional.

protection of investors, or otherwise in furtherance of the proposes of the Act.

**IV. Solicitation of Comments.**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the propsoed rule change between the Commission and any person, other than those that may by withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: March 9, 1988.

[FR Doc. 88-5852 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25442; File No. PHLX 88-9]**

## Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Value Line Arithmetic Average Computation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory orgnization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act") and its Rule 1009A proposes to revise the method of computation of the Value Line Composite Stock Average Index underlying index options contracts to an arithmetic avearge from a geometric average. All other contract terms respecting the Value Line Index Options contracts including the equal weighted feature would remain unchanged.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to conform index options trading on the Value Line Composite Stock Average Index ("XVL") with index futures trading respecting the same to be traded upon approval by the Commodity Futures Trading Commission ("CFTC") on the Kansas City Board of Trade ("KCBT"). The KCBT in cooperation with Value Line Inc. and the PHLX proposes to revise the computation of the XVL to an arithmetic average from a geometric average. The PHLX has been approved to trade the XVL index utilizing a geometric average computation pursuant to approval by the Securities and Exchange Commission under SEC Release No. 34-21392 dated October 10, 1984. The Exchange has also received Commission approval, but has not yet introduced European style options on the Value Line Index. *See* SEC Release No. 34-24508 dated May 22, 1987. The PHLX began trading the XVL on January 11, 1985.

In symbols, the geometric average, at any time during the day is:

$$IC = IP \times \frac{P1}{C1} \times \frac{P2}{C2} \times \ldots \times \frac{PN}{CN}^{1/N}$$

where,

IC = current value of the index

IP = closing value of the index on the previous day

Pi = current price of stock i

Ci = closing price of stock i on the previous day

N = number of stocks in the index

The proposed arithmetic average, in symbols, at any time during the day, is:

$$IC = IP \times \frac{\left(\frac{P1}{C1} + \frac{P2}{C2} + \ldots + \frac{PN}{CN}\right)}{N}$$

where each of the variables represents the same quantities that they do in the mathematical representation of the geometric index.

Value Line Inc. developed the Value Line Composite Stock Average Index as a geometric average to differentiate it from other popular price and capitalization weighted market indices which tend to only reflect the top bracket of publicly traded common stocks. While geometric averaging serves to differentiate the Value Line Composite Stock Average Index from other popular measurements of market performance it poses a number of problems for market participants utilizing a cash based valuation of their common stock portfolios which are arithmetically averaged as are all other index futures and options contracts. Geometric averaging tends to underperform an arithmetic average. The greater the volatility, the more significant the downward bias. This impedes efforts by market participants to develop precise hedges between the index contracts and their portfolios of underlying common stocks. In the past, this has resulted in substantial disparities between prices of the Value Line Composite Stock Average Index futures and options contracts and the level of the underlying cash index. The PHLX believes, as does the KCBT, that geometric averaging of the Value Line Composite Stock Average Index has created investor confusion and dissatisfaction and impaired confidence in Exchange markets. It is anticipated that a revision of the Value Line Composite Stock Average Index to arithmetic computation will facilitate cash market hedging while simplifying the task of broker-dealers explanation of the XVL product to investors interested in utilizing a strategic investment hedging product to protect diversified portfolios of common stocks.

The PHLX proposes to coordinate the introduction of options on the arithmetically computed Value Line Index with the KCBT. Attached herein as Exhibit 2 is a copy of the KCBT regulatory filing respecting this matter presently under consideration before the CFTC.

KCBT proposes to introduce futures contracts based on the revised arithmetic index promptly upon CFTC approval, beginning with the September 1988 contract and subsequent contract months. (The KCBT currently has futures on the geometric index only through the June contract month.) PHLX would like to coordinate introduction of the arithmetic contract to coincide with the KCBT's start-up date, but proposes to introduce American and European style options on the arithmetically derived index on a somewhat different manner. Rather than introduce options on the arithmetic index only for contract months beginning after the last currently outstanding options on the geometric XVL expire (the XVL currently has options outstanding through December), the Exchange proposes to introduce European and American options on the arithmetic Value Line index beginning with the near-term months. No new contract months on the existing geometric Value Line index would be added so that by December 1988 that options contract will be phased out. In the meantime, for a short period of time, there may be some arithmetic and geometric series open simultaneously.

The PHLX believes that a revision in the method of averaging the Value Line Composite Stock Index Average will significantly enhance the economic utility of XVL options contracts to market participants and could substantially increase contract volume by making the XVL index options easier to understand and use.

XVL volume and open interest is presently at historic lows. The PHLX believes that the proposed revision in computation of the Value Line Composite Stock Average Index will be least disruptive to the market place if made at this time. In this regard the PHLX requests expedited treatment with respect to this proposed rule change as it is necessary to coordinate with the KCBT the introduction of the arithmetically computed Value Line Composite Stock Index Average futures and options contracts.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act, which provides in pertinent part that the rules of the Exchange facilitate transactions in securities and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 7, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: March 10, 1988.

[FR Doc. 88-5853 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 22-17824]**

## Application and Opportunity for Hearing; Chemical New York Corp.

Notice is hereby given that Chemical New York Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Bank") under an indenture dated as of March 1, 1974 (the "1974 Indenture"), between the Company and Bank which was heretofore qualified under the Act and under an indenture dated as of February 15, 1984 (the "Original Indenture"), as amended by a First Supplemental Indenture dated as of May 1, 1987, a Second Supplemental Indenture dated as of August 14, 1987 and a Third Supplemental Indenture dated as of November 6, 1987 (such Original Indenture as supplemented hereinafter referred to as the "1984 Indenture") between Texas Commerce Bancshares, Inc., the Company and Bank which was heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under these indentures.

The Company alleges:

(1) Pursuant to the 1974 Indenture, the Company has outstanding approximately $43,660,000 aggregate principal amount of its 8.40% Debentures Due 1999, (the "Debentures"). The Debentures were registered under the Securities Act of 1933, (the "1933 Act") and the 1974 Indenture was qualified under the Act.

(2) Pursuant to the 1984 Indenture Texas Commerce Bancshares, Inc. ("TCB"), a wholly-owned subsidiary of the Company, has outstanding approximately $31,350,000 aggregate principal amount of its Floating Rate Notes Due 1996. (the "Notes"). The Notes were registered under the 1933 Act and the 1984 Indenture was qualified under the Act. Bankers Trust Company ("Bankers Trust") had been acting as Trustee under the 1984 Indenture. As of June 29, 1987, the

Company guaranteed on a subordinated basis the obligations of TCB under the 1984 Indenture with respect to the due and punctual payment of principal (and premium, if any) and interest on the Notes (the "Subordinated Guarantee"). On September 16, 1987, Bankers Trust notified the Company of its intention to resign as Trustee under the 1984 Indenture. The Company requested the Bank to accept appointment as Successor Trustee under the 1984 Indenture, and, as of November 6, 1987, the Bank accepted such appointment.

Simultaneously with such acceptance, the Company issued to the Bank for the benefit of the holders of the Notes, in full substitution and replacement of the Subordinated Guarantee, a new guarantee (the "Senior Guarantee"), under which the obligations of the Company in respect of its guarantee of payment of the Notes rank *pari passu* with the Company's obligations in respect of the Debentures.

(3) The Company's obligations with respect to the Debentures and under the Senior Guarantee with respect to the Notes are in each case wholly unsecured and rank equally *pari passu*.

(4) There is no default under the 1974 Indenture or the 1984 Indenture.

(5) Such differences as exist between the 1974 Indenture and the respective obligations of the Company as guarantor under the 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under either Indenture.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17824, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than April 4, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan Katz,**

*Secretary.*

[FR Doc. 88-58-54 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 1-9536]**

## Issuer Delisting; Application To Withdraw From Listing and Registration; International Telecharge, Inc. (Common Stock $.01 Par Value)

March 10, 1988.

International Telecharge, Inc. ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Common Stock of International Telecharge, Inc. ("Company") has been approved for listing and has commenced trading, as of March 4, 1988, on the American Stock Exchange, Inc. ("Amex"). The Company wishes to have its Common Stock traded only on the Amex. In this connection, the Company delisted from the NASDAQ National Market System at the open of business on Friday, March 4, 1988.

Any interested person may, on or before March 31, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, it any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-5855 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16311; (812-6958)]**

## Wells Fargo Bank, N.A. and Wells Fargo Investment Advisors; Application and Temporary Order

March 11, 1988.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of Application for an Order of Permanent Exemption under the Investment Company Act of 1940 ("1940 Act") and Order of Temporary Exemption.

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*Applicants:* Wells Fargo Bank, N.A. ("Bank") and Wells Fargo Investment Advisors ("WFIA").

*Relevant 1940 Act Sections:* Permanent order requested, and temporary order granted, under section 9(c) from section 9(a).

*Summary of Application:* Applicants seek a permanent order pursuant to section 9(c) of the 1940 Act granting exemption from the provisions of section 9(a). Applicants also request a temporary order granting exemption from section 9(a) until the Commission takes action on the request for the permanent order.

*Filing Dates:* The application was filed on January 15, 1988, an amended on February 1 and March 3, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on April 5, 1988. Request a hearing in writing, stating the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personnally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

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**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549; Applicants, 420 Montgomery Street, San Francisco, California 94163.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

*Applicants' Representations:*

1. Applicants are both wholly-owned subsidiaries of Wells Fargo & Company, a California corporation and a publicly held registered bank holding company. The Bank currently serves as investment adviser to Wells Fargo Investment Trust for Retirement Programs, an investment company registered under the 1940 Act. WFIA currently serves as investment adviser to the Dreyfus Index Fund and a series of the Frank Russell Investment Company, both of which are also investment companies registered under the 1940 Act. In addition, the Bank anticipates serving as investment adviser to Overland Express Funds Inc. ("Overland"), a newly organized investment company, and WFIA proposes to serve as investment adviser to the Benham Variable Insurance Trust ("Benham"), another newly organized investment company. According to the application, it is expected that Overland, within two to three weeks, and Benham in early March, will file pre-effective amendments to their 1933 Act registration statements and at that time request that those registration statements be declared effective. Moreover, either or both of the Applicants may serve as investment advisers to, depositors of or principal underwriters for, additional investment companies in the future.

2. According to the application, on November 19, 1987, the Commodity Futures Trading Commission ("CFTC") filed a civil complaint ("Complaint") in the United States District Court for the Central District of California against the Bank. The CFTC alleged that the "Wells Fargo Gold Market Certificates" ("Certificates") that were offered and sold by the Bank to members of the general public had the characteristics of a call option based on a regulated commodity, namely gold; thus, they could be traded only on or subject to the rules of a CFTC-designated contract market, and only by or through a member of such a contract market.

3. On the same day that the Complaint was filed, the Bank consented, without admitting or denying any of the allegations in the Complaint (except as to jurisdiction), to the entry of an order ("Order") permanently enjoining the Bank, its directors, officers, employees, agents, subsidiaries and affiliates, from directly or indirectly engaging in any transaction involving a commodity option in violation of any CFTC rule, regulation or order. In addition, the Bank was rquired to rescind and cancel all outstanding Certificates and make full restitution to each purchaser of the Certificates.

*Applicants' Legal Analysis:*

1. Section 9(a)(2) of the 1940 Act, as here relevant, automatically disqualifies any person from serving as investment adviser to, depositor of or a principal underwriter for any registered investment company if such person is, by reason of any misconduct, permanently or temporarily enjoined by any court order, judgment of decree from: (i) "acting as an * * * entity or person required to be registered under the Commodity Exchange Act." (ii) "engaging in or continuing any conduct or practice in connection with any such activity;" or (iii) engaging in or continuing any conduct or practice "in connection with the purchase or sale any security." Although the Order named only the Bank, all persons generically referred to therein (including WFIA) were also enjoined, and thus, all such persons are disqualified from serving registered investment companies in the capacities set forth in section 9(a). Accordingly, Applicants seek exemptive relief on behalf of themselves and all persons generally referenced in the Order. Section 9(c) of the 1940 Act provides that the Commission shall grant an application for an exemption from the provisions of section 9(a), either unconditionally or conditionally, on a permanent or temporary basis if it is established that the prohibitions of section 9(a), as applied to the applicant(s), are "unduly or disproopportionately severe", or that the conduct of the applicant(s) has been such as "not to make it against the public interest or protection of investors to grant such applicant."

2. In support of their position that the Commission should grant the requested temporary and permanent exemptions from the prohibitions of section 9(a) of the 1940 Act, to the extent such provisions are applicable as a result of the Order, Applicants assent the following.

a. Applicants submit that even if the enjoined activities cause the prohibitions of Section 9(a) to be applicable, either because they are found to relate to registration under the Commidity Exchange Act, or because the Certificates are deemed to be securities, such activities are, at most, peripheral to the central purposes of Section 9(a) in that they do not relate to, or raise any issues regarding, investment advisory activities (or activities as a depositor or prinoipal underwriter for an investment company), any person's qualfications to act in such capacities or any issues relating to Applicants' honesty or integrity.

b. None of the allegations in the Complaint relates in any way to the current or proposed activities of any investment companies or, specifically, to Applicants' current or proposed activities as investment advisers to (or, as depositors of or principal underwriters for) any investment companies. Similarly, the prohibitions set forth in the Order do not directly apply, in any manner, to the current or proposed activities of any investment companies. Moreover, none of the personnel of the Bank and WFIA involved in the day-to-day provision of investment advisory services to any existing investment companies was involved in the facts and circumstances that gave rise to the Complaint and Order. The Bank consented to make, and has already made, full restitution to each purchaser of Certificates.

c. The prohibitions of section 9(a) would be unduly and disproportionately severe, as applied to Applicants, because such prohibitions, in substance, would deprive the funds currently advised by either applicant and their shareholders (who have selected the Bank and WFIA as their respective investment advisers), of Applicants' investment advisory services. Moreover, the independent sponsors and distributors of such funds would be deprived of the investment advisory services of the Bank and WFIA, which services they negotiated for at the time those funds were orgainzed. Such deprivation could operate signficantly to the detriment of the financial interests of such funds and/or existing and prospective shareholders, none or whom were in any way involved in, or implicated by, the facts and circumstances that gave rise to the Complaint and Order.

d. The prohibitions of section 9(a) would be unduly and dispropontionately severe, as applied to the Bank and WFIA, in that both have expended

substantial resources in connection with the organization and registration activities associated with the start-up of the newly established funds. Moreover, the independent sponsor and distributor of a newly established investment company that is nearing effectiveness, which has expended substantial resources in connection with the start-up of the fund and which has in no way been implicated by the facts and circumstances that gave rise to the Complaint and Order, would be subject to severe and unwarranted hardships if Applicants' request is not granted. Such an independent sponsor and distributor would be required either to abandon, or substantially delay, plans for the public sale of the shares of such fund or attempt to procure a new adviser possessing comparable investment advisory capabilities. Such a sponsor and distributor would find it difficult, if not impossible, to find a satisfactory substitute investment adviser.

e. The prohibitions of section 9(a) would be especially unfair as applied to WFIA and the other companies of which the Bank is an affiliated person, which were not implicated by the facts and circumstances that gave rise to the Complaint and Order, but which are subject to the Order, and would be subject to the Section 9(a) prohibitions, solely because of their affiliation with the Bank.

f. The facts and circumstances that gave rise to the Complaint and Order are such as not to make it against the public interest or protection of investors for the Commission to grant the requested exemption. In this regard, no fraudulent activities, misleading statements or material omissions, of any nature, were alleged in connection with the offer and sale of the Certificates. Indeed, it is noteworthy that the Bank's consent to entry of the Order contains the stipulation that the Order "shall not in the future constitute the sole basis for denying, suspending, or revoking any registration of Wells Fargo with the Commodity Futures Trading Commission."

g. The public interest and the goal of protecting investors dictate that the temporary requested exemption be granted so that the investment companies currently advised by either the Bank or WFIA can maintain uninterrupted operations and that the funds in registration can proceed as reasonably contemplated by the other participants, including their independent sponsors and distributors. Moreover, granting the temporary exemption would protect the interests of the investment companies being served by Applicants by allowing time for the orderly consideration of the application for permanent relief or the orderly transition of the Applicants' responsibilities to successors, or both. Such result is fully consistent with the purposes and policies underlying the provisions of the 1940 Act.

h. Neither the Bank nor WFIA has ever previously applied for an exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act.

3. In making this application, Applicants acknowledge, understand and agree that the application and any temporary or permanent exemption issued shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including, without limition, the consideration of Applicants' instant request for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act, or the revocation or removal of any temporary exemption granted in connection with the application.

*Temporary Order:*

Based on the foregoing, including Applicants' representations, the Complaint and the Order, and the remedial provisions resulting therefrom, the Commission has considered the matter and finds, under the standards of section 9(c) of the 1940 Act applicable to this matter, that the Applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, it is ordered, under section 9(c) of the 1940 Act, that the Applicants and all persons generically referred to in the Order are hereby temporarily exempted, to the extent necessary as a result of entry of the Order, from the provisions of section 9(a) of the 1940 Act until the Commission takes final action on the application for an order granting the Applicants and such persons a permanent exemption from the provisions of section 9(a) of the 1940 Act.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-5856 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Application No. 05/05-0208]**

### Hidden Oaks Financial Services, Inc.; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Hidden Oaks Financial Services Inc., 4620 West 77th Street, Suite 155, Edina, Minnesota 55435, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors, and major shareholders of the Applicant as follows:

C. Patrick Schulke, 8905 Hidden Oaks Drive, Eden Prairie, Minnesota 55344, President, Director, 33⅓ percent.

Curtis A. Stephan, 17220 19th Avenue, N., Plymouth, Minnesota 55447, Vice President, 33⅓ percent.

Charles E. Bidwell, 835 Windjammer Lane, Mound, Minnesota 55364, Vice President, Director, 33⅓ percent.

Michael W. Wilson, 1783 Holton Street, Falcon Heights, Minnesota, Treasurer.

Rick L. Olson, 4620 West 77th Street, Suite 155, Edina, Minnesota 554135, Manager.

The Applicant, Hidden Oaks Financial Services, Inc. a Minnesota Corporation will begin operations with $1,025,000 paid in capital and paid in surplus, will conduct its activities primarily in the State of Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and the upper Pennisula of Michigan but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended and the SBA Rules and Regulations.

Notice is further given that any person may, not later, than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St. NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Edina, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

Dated: March 11, 1988.

[FR Doc. 88-5810 Filed 3-16-88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Monterey County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Withdrawal of previous notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be forthcoming, as was specified in the original Notice of Intent published in the **Federal Register** on October 10, 1986 (51 FR 36332).

**FOR FURTHER INFORMATION CONTACT:** C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1310.

**SUPPLEMENTARY INFORMATION:** Having considered the limited scope of the work now proposed (pavement rehabilitation and shoulder construction), the Department of Transportation has decided not to seek Federal funding for improvement of State Route 1 from 0.2 miles north to 1.5 miles north of Juan Higuera Creek Bridge in Monterey County, California.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: March 9, 1988.

C. Glenn Clinton,

*District Engineer, Sacramento, California.*

[FR Doc. 88-5782 Filed 3-16-88; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: March 11, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

#### U.S. Customs Service

*OMB Number:* 1515-0083.
*Form Number:* CF 5520.
*Type of Review:* Reinstatement.
*Title:* Special Summary Steel Invoice.
*Description:* The importer/manufacturer completes the Customs Form 5520, the entry is reviewed by Customs personnel for accuracy. The document is transferred to the International Trade Administration, Department of Commerce where the information is computerized and monitored for compliance with the requirements of various steel programs.
*Respondents:* Businesses or other for-profit.
*Estimated Burden:* 32,640 hours.
*Clearance Officer:* Dennis Dore, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

*Departmental Reports Management Officer.*

[FR Doc. 88-5807 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: March 10, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

#### Internal Revenue Service

*OMB Number:* 1545-0284.
*Form Number:* IRS Form 5309.
*Type of Review:* Extension.
*Title:* Application for Determination of Employee Stock Ownership Plan.
*Description:* Form 5309 is filed with Form 5301, 5303, or 5307, when applying for a determination letter as to a deferred compensation plan's qualification status under sections 409 and 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.
*Respondents:* Businesses or other for-profit.
*Estimated Burden:* 221 hours.
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

*Departmental Reports Management Officer.*

[FR Doc. 88-5808 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: March 10, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

#### Comptroller of the Currency

*OMB Number:* 1557-0094.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Notice of Future and Forward Placement Contract Activities (BC-79).
*Description:* All national banks are required to notify OCC of their intent to undertake, purchase and sale of future contracts and forward placement contracts. They are also advised to maintain records permitting them and

OCC examiners to verify that such activity does not endanger the safety and soundness of those banks.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Burden:* 12,513 hours.

*OMB Number:* 1557-0166.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Minimum Capital Requirements (12 CFR Part 3).

*Description:* Information collection requirements ensure compliance with minimum capital requirements of 12 CFR Part 3. Information will be used to evaluate banker plans to meet capital ratios imposed by regulation.

*Respondents:* Businesses or other for-profit; Small businesses or organizations.

*Estimated Burden:* 13,560 hours.

*Clearance Officer:* John Ference, (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

*OMB Reviewer:* Robert Fishman, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 88-5809 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-25-M

## Fiscal Service

**[Dept. Circ. 570, 1987 Rev., Supp. No. 15]**

### Surety Companies Acceptable on Federal Bonds; Acceleration National Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24603 to reflect this addition:

*ACCELERATION NATIONAL INSURANCE COMPANY.* BUSINESS ADDRESS: 475 Metro Place North, P.O. Box 7000, Dublin, OH 43017. UNDERWRITING LIMITATION *b/*: *$808,000. SURETY LICENSES c/*: AL, DC, GA, IA, KY, MI, MS, NM, OH, OK, WY. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS *d/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

Dated: March 9, 1988.

[FR Doc. 88-5857 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-35-M

**[Dept. Circ. 570, 1987 Rev., Supp. No. 16]**

### Surety Companies Acceptable on Federal Bonds; Island Insurance Co., Ltd.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24616 to reflect this addition:

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: 1022 Bethel Street, Honolulu, Hawaii 96813. UNDERWRITING LIMITATIONS *b/*: *$2,867,000.* SURETY LICENSES *c/*: HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS *b/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 23). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business, and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: March 9, 1988.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 88-5858 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-35-M

**[Dept. Circ. 570, 1987 Rev., Supp. No. 14]**

### Surety Companies Acceptable on Federal Bonds; United Capitol Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24627 to reflect this addition:

*United Capitol Insurance Company.* BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, Georgia 30319. UNDERWRITING LIMITATION *b/*: *$2,758,000. SURETY LICENSES C/*: WI and AZ. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS *d/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: March 9, 1988.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 88-5859 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-35-M

## VETERANS ADMINISTRATION

### Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under the Federal Advisory Committee Act that a meeting of the Cooperative Studies Evaluation Committee will be held at the Back Bay Hilton Hotel, Dalton Street, Boston, MA, on April 26 and 27, 1988. The session on April 26 is scheduled to begin at 7:30 a.m. and end at 3:30 p.m. and the session on April 27 is scheduled to begin at 7:30 a.m. and end at 1:00 p.m. The meeting will be for the purpose of reviewing three proposed new clinical trials, one in cardiovascular and two in cancer research, and the progress of on-going

studies concerning epilepsy and liver diseases. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8 a.m., on April 26, 1988 to discuss the general status of the program. To assure adequate accommodations, those whose plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-233-2861), prior to April 16, 1988.

The meeting will be closed from 8 a.m. to 3:30 p.m. on April 26, and from 8 a.m. to 1 p.m. on April 27, 1988, for consideration of specific proposals in accordance with provisions set forth in sections 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: March 9, 1988.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 88-5891 Filed 3-16-88; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 52
Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 3:00 p.m., Sunday, March 13, 1988.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:**

*Enforcement Matter OS# 3530*

The Commission will consider Enforcement Matter OS# 3530.

The Commission decided that agency business required holding this meeting without the usual advance notice.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

March 14, 1988.

[FR Doc. 88-5987 Filed 3-15-88; 3:15 pm]

BILLING CODE 6355-01-M

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**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m, Monday, March 14, 1988.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:**

*Enforcement Matter OS# 3530*

The Commission will consider Enforcement Matter OS# 3530.

The Commission decided that agency business required holding this meeting without the usual advance notice.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

March 14, 1988

[FR Doc. 88-5988 Filed 3-15-88; 2:19 pm]

BILLING CODE 6355-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, March 23, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 15, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88-5999 Filed 3-15-88; 3:42 pm]

BILLING CODE 6210-01-M

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**LEGAL SERVICES CORPORATION**

Audit and Appropriations Committee Meeting

**TIME AND DATE:** The meeting will commence at 9:00 a.m. on Friday, March 25, 1988, and continue until 11:00 a.m.

**PLACE:** The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda
2. Approval of Minutes
   —Meeting of January 29, 1988
3. Consideration of the FY 1987 Audit Report
4. Review of Monthly Expenditures for December and January

Discussion and Public Comment follow each item.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: March 15, 1988.

**Maureen R. Bozell,**

*Secretary.*

[FR Doc. 88-6007 Filed 3-15-88; 4:00 pm]

BILLING CODE 7050-01-M

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**LEGAL SERVICES CORPORATION**

Board of Directors Meeting

**TIME AND DATE:** The open meeting of the Board of Directors will commence at 11:00 a.m. or immediately following the Audit and Appropriations Committee meeting. The meeting is to be held on Friday, March 25, 1988, in the New Mexico Room. An Executive Session will also be held on Friday from 12:00 p.m. until 1:30 p.m. in the Rainbow Room.

**PLACE:** The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

**STATUS OF MEETING:** Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)).

**MATTERS TO BE CONSIDERED:**

Executive Session (Closed)

1. Personnel and Personal Matters
2. Litigation and Investigation Matters

Board of Directors Meeting (Open)

1. Approval of Agenda
2. Approval of Minutes
   —Feburary 26, 1988
3. Report from the Audit and Appropriations Committee
4. Ratification of FY 1988 Budget
5. Report from the Provision of the Delivery of Legal Services Committee
6. Report by Douglas J. Besharov of the American Enterprise Institute on "Maximizing Access to Justice"
7. Consideration of the FY 1989 Budget Request and President Reagan's Proposed 1989 Budget
8. Report on Functional Accounting
9. Consideration of Revised 45 CFR Part 1611, Poverty Income Guidelines
10. Report on Reprograming of 45 CFR 1607.6, Compensation

Discussion and Public Comment follow each item.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

**Maureen R. Bozell,**

*Secretary.*

[FR Doc. 88–6006 Filed 3–15–88, 4:00 pm]

BILLING CODE 7050-01-M

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**LEGAL SERVICES CORPORATION**

Provision for the Delivery of Legal Services Committee

**TIME AND DATE:** The meeting will commence at 5:00 p.m. on Thursday, March 24, 1988, and continue until 7:00 p.m.

**PLACE:** The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda
2. Approval of Minutes—August 7, 1987
3. Consideration of State Support Center Funding Status

Discussion and Public Comment follow each item.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

**Maureen R. Bozell,**

*Secretary.*

[FR Doc. 88–6005 Filed 3–15–88; 4:00 pm]

BILLING CODE 7050-01-M

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**LEGAL SERVICES CORPORATION**

Voucher Subcommittee to the Provisions for the Delivery of Legal Services Committee

**TIME AND DATE:** The meeting will commence at 4:00 p.m. on Thursday, March 24, 1988, and continue until 5:00 p.m.

**PLACE:** The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda
2. Public Comment Concerning the Voucher Program

Discussion and Public Comment follow each item.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

**Maureen R. Bozell,**

*Secretary.*

[FR Doc. 88–6008 Filed 3–15–88; 4:00 pm]

BILLING CODE 7050-01-M

# Corrections

Federal Register
Vol. 53, No. 52
Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 4F3119/R927; FRL-3312-2]**

### Oxyfluorfen; Pesticide Tolerance

*Correction*

In rule document 88-161 beginning on page 243 in the issue of Wednesday, January 6, 1988, make the following correction:

On page 243, in the third column, in the fifth paragraph, in the last line, "23.13 percent" should read "23.17 percent".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 201, 356, and 369

**[Docket No. 81N-0033]**

### Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

*Correction*

In proposed rule document 88-1455 beginning on page 2436 in the issue of Wednesday, January 27, 1988, make the following corrections:

1. On page 2438, in the second column, in the second complete paragraph, in the 19th line, "working" should read "wording".

2. On page 2450, in the first column, in the fourth line "217" should read "211".

3. On page 2455, in the first column, in designated paragraph 22, the second line should read "Panel in § § 356.50(c)(1)(i) and (ii),".

**§ 356.55 [Corrected]**

4. On page 2459, in the second column, in § 356.55(d)(6)(i)(A), in the fourth line, remove ". Gargle, swish around, or" and insert a comma.

5. On the same page, in the second column, in § 356.55(d)(6)(i)(B), in the third and fourth lines, remove "Apply to the affected area."

BILLING CODE 1505-01-D

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline To Participate in Off-Site Emergency Planning

*Correction*

In rule document 87-25439 beginning on page 42078 in the issue of Tuesday, November 3, 1987, make the following correction:

On page 42079, in the third column, in the second complete paragraph, in the sixth line, "generally" should read "equally".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 172

### Hazardous Materials Table

*CFR Correction*

In the October 1, 1987 revision of Title 49 (Parts 100 to 177) of the Code of Federal Regulations, on pages 78 through 167, the text of several entries in the "Hazardous Materials Table" in § 172.101 was incorrectly published based on the amendatory language contained in the rule document of November 21, 1986 (51 FR 42174). The table is corrected as follows:

1. Columns 1 through 7(c) for the shipping descriptions listed below are removed.

Adipic acid
Aluminum sulfate, solid
Ammonium acetate
Ammonium benzoate
Ammonium bicarbonate
Ammonium chloride
Ammonium chromate
Ammonium citrate, dibasic
Ammonium sulfamate
Ammonium sulfite
Ammonium tartrate
Ammonium thiocyanate
Ammonium thiosulfate
Antimony trioxide
Benzoic acid
n-Butyl phthalate
Cadmium acetate
Cadmium bromide
Cadmium chloride
Calcium chromate
Calcium dodecylbenzenesulfonate
Captan
Chromic acetate
Chromic sulfate
Chromous chloride
Cobaltous bromide
Cobaltous formate
Cobaltous sulfamate
Cupric acetate
Cupric oxalate
Cupric sulfate
Cupric sulfate, ammoniated
Cupric tartrate
Dicamba
Dichlobenil
Dichlone
2,4-Dichlorophenoxyacetic acid ester
Dinitrotoluene, liquid
Dinitrotoluene, solid
Diquat
Diuron
Ethylenediaminetetraacetic acid
Ferric ammonium citrate
Ferric ammonium oxalate
Ferric fluoride
Ferric sulfate
Ferrous ammonium sulfate
Ferrous sulfate
Fumaric acid
Heptachlor
Isopropanolamine dodecylbenzenesulfonate
Kelthane
Kepone
Lead acetate
Lead iodide
Lead stearate
Lead sulfate
Lead sulfide
Lead thiocyanate
Lithium chromate
Mercaptodimethur
Methoxychlor
Naled
Naphthenic acid
Nickel ammonium sulfate
Nickel chloride
Nickel hydroxide
Nickel sulfate
Nitrophenol
Nitrotoluene
Pentachlorophenol
Polychlorinated biphenyls
Potassium chromate
Propargite
Pyrethrins
Quinoline
Resorcinol
Sodium chromate
Sodium dodecylbenzenesulfonate
Sodium phosphate, dibasic
Sodium phosphate, tribasic
Strontium chromate
2,4,5-Trichlorophenoxyacetic acid amine, ester, or salt
2,4,5-Trichlorophenoxypropionic acid ester
Triethanolamine dodycylbenzenesulfonate
Vanadium pentoxide
Vanadyl sulfate
Zinc acetate
Zinc ammonium chloride
Zinc borate
Zinc bromide
Zinc carbonate
Zinc chloride, solid
Zinc fluoride
Zinc formate
Zinc phenolsulfonate
Zinc silicofluoride
Zinc sulfate
Zirconium potassium fluoride

2. In Column 2, the following shipping descriptions are corrected:

"Allyl alcohol (*RQ–100/45.4*)" should read "Allyl alcohol".

"Carbofuran mixture, liquid (*RQ–10/45.4*)" should read "Carbofuran mixture, liquid".

"Hydrogen chloride *or* Hydrogen chloride, anhydrous (*RQ5000/2270*)" should read "Hydrogen chloride *or* Hydrogen chloride, anhydrous".

"Lead sulfate (*RQ–5000/2270*)" should read "Lead sulfate".

"Phosphorus pentasulfide (*RQ–100/45.4*)" should read "Phosphorus pentasulfide".

"Phosphorus trichloride (*RQ–5000/2270*)" should read "Phosphorus trichloride".

"Resorcinol (*RQ–1000/454*)" should read "Resorcinol".

"Sodium methylate, dry (*RQ–1000/454*)" should read "Sodium methylate, dry".

"Uranyl acetate (*RQ–5000/2270*)" should read "Uranyl acetate".

"Uranyl nitrate hexahydrate solution (*RQ–5000/2270*)" should read "Uranyl nitrate hexahydrate solution".

"Uranyl nitrate, solid (*RQ–5000/2270*)" should read "Uranyl nitrate, solid".

BILLING CODE 1505-02—D

federal register

Thursday
March 17, 1988

Part II

# Department of Transportation

Coast Guard

33 CFR Part 117

Drawbridge Operation Regulations; Potomac River, District of Columbia et al.; Temporary Deviation From Drawbridge Regulations With Request for Comments and Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD5-88-09]**

## Drawbridge Operation Regulations; Potomac River, District of Columbia et al.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from drawbridge regulations with request for comments.

**SUMMARY:** The City of Alexandria, Virginia, Fairfax County, Virginia, and Congressman Frank R. Wolf of Virginia have requested that the Coast Guard amend the regulations for the Woodrow Wilson Memorial (I-95) drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to most vessel traffic. The requested change is intended to help relieve highway traffic congestion during the extended rush hours on this major commuter artery, an important segment of the interstate highway system that connects the northeastern and southeastern portions of the United States. The purpose of this deviation from the regulation is to evaluate the impact of the proposed operating schedule for the bridge on both highway and waterway users.

**DATES:** This temporary deviation from the regulations is effective from April 15, 1988, through June 15, 1988.

**ADDRESS:** Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 553, a notice of proposed rulemaking was not published for this temporary deviation. Following normal rulemaking procedures is unnecessary and impractical, since the impact on the proposed change to the regulations governing the Woodrow Wilson bridge cannot be completely assessed without this temporary deviation to permit an evaluation of the proposed change. This procedure is authorized by 33 CFR 117.43. Although this temporary deviation is published as a "final rule" for a limited period without prior opportunity for public comment, public comments are desired to ensure that the temporary deviation and the proposed rule are reasonable and workable.

Persons wishing to make comments expressing their views or arguments may do so by submitting written comments to the office listed under **ADDRESS** in this preamble. Commenters should include their names and addresses, identify the docket number for this temporary deviation (CGD5-88-09), give reasons for their comments, and include any available supporting data.

Persons desiring an acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine whether the temporary deviation or the proposed regulations should be amended in light of comments received.

### Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

### Discussion of Temporary Deviation

The temporary deviation extends the times when the draw will remain closed to vessel traffic during both the morning and evening rush hours. At the present, the drawbridge remains closed to most vessel traffic Monday through Friday, from 6:30 a.m. to 9:00 a.m. and 4:00 p.m. to 6:30 p.m. During the test period, with one exception, the bridge will remain closed to all vessel traffic Monday through Friday, from 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 8:00 p.m. The provision that requires the draw to open on signal at all times for public vessels, tour boats, and vessels in distress is also eliminated. This temporary deviation is being issued in conjunction with a notice of proposed rulemaking (CGD5-88-08), which is published elsewhere in this issue of the **Federal Register**.

With one exception, that notice proposes to make permanent the changes to the regulations contained in this temporary deviation. This temporary deviation differs from the notice of proposed rulemaking to the extent that this temporary deviation preserves the current opening schedule for deep draft, oceangoing vessels bound to or from the Robinson Terminals in Alexandria, Virginia.

This exception was preserved in the temporary deviation to permit an additional analysis of the possible economic impact of the proposed rule on the Robinson Terminals. Other than naval vessels visiting the Washington, DC area, the vessels, that call at the Robinson Terminals are the only deep draft, oceangoing vessels that routinely operate on the Potomac River. Due to tidal restrictions on when those vessels can navigate the river, the extension of the closed period may have a significant impact on the economic viability of that terminal. That economic impact will be assessed during the comment period of the notice of proposed rulemaking.

This temporary deviation also amends the temporary rule (CGD5-88-02) governing this bridge issued on February 14, 1988, with a beginning effective date of February 29, 1988. The temporary rule was published in the **Federal Register** on March 4, 1988 (53 FR 6984).

### Economic Assessment and Certification

This temporary rule is considered to be non-major under the Executive Order 12291 and nonsignificant under the Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this temporary deviation is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the temporary deviation will continue to provide the same opportunities for bridge openings for the only large commercial vessels that currently use the waterway.

Further, the temporary deviation will help eliminate traffic backups on this vital highway link, resulting in savings of time and fuel by highway users.

The other vessels that may be impacted by this temporary deviation will include public vessels (primarily naval vessels visiting the Washington, DC area and Coast Guard buoy tenders working aids to navigation on the upper Potomac River), a few fuel barges being handled by towing vessels, and recreational sailboats. It is our understanding that all of the tour boats that routinely use the upper Potomac River are able to pass under the bridge at normal tide levels.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, it will not have a significant economic impact on a substantial number of small entities.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District (804) 398-6222.

### List of Subjects in 33 CFR Part 117

Bridges.

### Temporary Deviation

In consideration of the foregoing, §117.255(a) of Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

## PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.255(a) is revised to read as follows:

### § 117.255 Potomac River.

(a) The draw of the Woodrow Wilson Memorial (I–95) bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, shall open on signal, except the draw need not open:

(1) For the passage of deep draft, oceangoing vessels bound for or from the Robinson Terminals in Alexandria, Virginia, from 6:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:30 p.m., on Mondays through Fridays, other than Federal holidays.

(2) For the passage of other vessels from 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 8:00 p.m., on Mondays through Fridays, other than Federal holidays.

(3) From 10:00 a.m. to 3:00 p.m., on Mondays through Fridays, other than Federal Holidays, unless at least one hour advance notice is given for an opening.

* * * * *

3. This temporary deviation is effective from April 15, 1988, until June 15, 1988, unless amended or terminated before that date.

Dated: March 8, 1988.

**A.D. Breed,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 88–5890 Filed 3–16–88; 8:45 am]

BILLING CODE 4910–14–M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD5-88-08]**

## Drawbridge Operation Regulations; Potomac River, District of Columbia et al.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia have requested that the Coast Guard amend the regulations for the Woodrow Wilson Memorial (I-95) drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to vessel traffic. The purpose of this proposed change is to help relieve highway traffic congestion during the extended rush hours on this major commuter artery, an important segment of the interstate highway system that connects the northeastern and southeastern portions of the United States. This action should help relieve some of the serious traffic congestion on this bridge and approach roads.

**DATE:** Comments must be received on or before May 2, 1988.

**ADDRESSES:** Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, and arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

### Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

### Discussion of Proposed Regulations

The City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia have requested that the drawbridge be regulated to further restrict openings during morning and evening rush hours, Monday through Friday, except Federal Holidays, by extending the current hours that the bridge is required to be closed to vessel traffic. Currently the drawbridge remains closed to most vessel traffic Monday through Friday, from 6:30 a.m. to 9:00 a.m., and 4:00 p.m. to 6:30 p.m. The requested change would extend the closed period to include the hours between 6:00 a.m. to 10:00 a.m., and 3:00 p.m. to 8:00 p.m. The provision that requires the draw to open on signal at all times for public vessels, tour boats, and vessels in distress has been eliminated in this proposal.

This proposed rule is being issued in conjunction with a notice of temporary deviation from drawbridge regulations with request for comments (CGD5-88-09) which is published elsewhere in this issue of the **Federal Register**. This notice differs from the temporary deviation to the extent that this notice does not preserve the current opening schedule for deep draft, oceangoing vessels bound to or from the Robinson Terminals in Alexandria, Virginia. That exception was allowed in the temporary deviation in order to permit an additional analysis of the possible economic impact of this proposed rule on the Robinson Terminals. The District of Columbia Department of Transportation has provided data that shows that bridge openings during rush hours during the month of February, 1988, caused traffic backups up from one to one and a half miles in length. Anecdotal information indicates that these backups do not automatically clear when the draw is closed. It generally takes a while to return to a normal traffic flow, as a result of the related traffic accidents and mechanical breakdowns that frequently occur during traffic stoppages, such as bridge openings.

The Woodrow Wilson Bridge, a part of I-95, is an important link in the Interstate Highway System. It is on the primary route for vehicle traffic, particularly large trucks, between the Northeastern and Southeastern sections of the Nation. It is also a major commuter artery for commuters traveling between Maryland, Virginia, and the District of Columbia. The bridge is heavily traveled throughout the day and night, with the heaviest use during the extended morning and evening rush hours. Extensive backups at the bridge can have a major impact on other routes in the region. A temporary rule (CGD5-88-02) governing the operation of this bridge during current repairs was issued on February 14, 1988, with a beginning effective date of February 29, 1988. The temporary rule was published in the **Federal Register** on March 4, 1988 (53 FR 6984). The temporary rule requires one hour advance notice for draw openings between 9:00 a.m. and 4:00 p.m. on Mondays through Fridays, other than Federal holidays. The temporary deviation from the drawbridge regulations (CGD5-88-09), issued in conjunction with this notice of proposed rulemaking, amended the temporary rule by incorporating extended rush hour opening restrictions into that temporary rule. If this proposed regulation is adopted, the temporary rule, which is effective until November 30, 1988, unless amended or terminated before that date, will need to be amended.

### Economic Assessment and Certification

The proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). However, a full regulatory evaluation may be required before a final rule is issued. Other than naval vessels visiting the Washington, DC area, the vessels that call at the Robinson Terminals are the only deep draft, oceangoing vessels that routinely operate on the Potomac River. The operator of the Robinson Terminals has advised us that this proposal may have an adverse impact on his ability to stay in business. The economic impact of this proposal on Robinson Terminal and others will be assessed during the comment period of this notice of proposed rulemaking.

The other vessels that may be impacted by the proposed change will include public vessels (primarily naval vessels visiting the Washington, DC area and Coast Guard buoy tenders working aids to navigation on the upper Potomac River), a few fuel barges being handled by towing vessels, and recreational sailboats. It is our understanding that all of the tour boats that routinely use the upper Potomac River are able to pass under the bridge at normal tide level.

The proposed change should have a positive effect on vehicular traffic on

this vital highway link, resulting in saving of time and fuel by highway users.

**List of Subject in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.255(a) is revised to read as follows:

**§ 117.255 Potomac River.**

(a) The draw of the Woodrow Wilson Memorial (I-95) Bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, shall open on signal, except the draw need not open for the passage of vessels from 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 8:00 p.m., on Mondays through Fridays, other than Federal Holidays.

Dated: March 8, 1988.

**A.D. Breed,**

*Rear Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.*

[FR Doc. 88-5888 Filed 3-16-88; 8:45 am]

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Federal Register

Thursday
March 17, 1988

Part III

# Department of Health and Human Services

## Food and Drug Administration

**Advisory List of Critical Devices—1988; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 86N-0499]

### Advisory List of Critical Devices—1988

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing its updated and expanded "Advisory List of Critical Devices—1988" prepared by FDA's Center for Devices and Radiological Health (CDRH). In the preamble to FDA's final rule establishing current good manufacturing practice (CGMP) regulations for medical devices that FDA promulgated in 1978, FDA provided an illustrative list of devices that would be subject to the "critical device" requirements in that final rule. FDA's revisions to that list reflect current classification names for devices, changes resulting from petitions for exemption, and FDA decisions based upon recommendations of the Device Good Manufacturing Practices Advisory Committee (the Committee). FDA is taking this action under the Medical Device Amendments of 1976.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7984.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 21, 1978 (43 FR 31508), FDA published the current good manufacturing practices (CGMP) regulations for medical devices. The preamble to the CGMP regulations provided a "Guideline List of Critical Devices" (43 FR 31511). This was an illustrative list of 75 devices provided to give examples of devices that FDA concluded met the definition of critical device as found in the final CGMP regulations (21 CFR 820.3(f)). The definition reads "a device that is intended for surgical implant into the body or to support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user." In developing this list, FDA used the recommendations received from the Committee (21 CFR 14.100(d)(2)) and the device advisory panels (21 CFR 14.100(d)(1)). The agency announced that the list was not exhaustive and that it was based on the most current information available to FDA. The agency also stated that the list would be updated periodically as additional information became available and after consultation with the Committee (43 FR 31511).

As discussed below, seven devices have been removed from the list since publication of the original list of 75 critical devices. In the **Federal Register** of November 14, 1978 (43 FR 52701), FDA published a correction to the original "Guideline List of Critical Devices" to remove two of the 75 devices: the catheter, embolectomy (No. 16); and the catheter, septostomy (No. 18). These two devices had been erroneously listed as critical devices. Recently, on its own initiative, FDA has removed an additional device from the list: apparatus, suturing, stomach, and intestinal (No. 8).

On July 3, 1980, in response to a petition (79P-0460), FDA removed three additional devices from the critical device list: the airway, bi-nasopharyngeal (No. 1); the airway, nasopharyngeal (No. 3); and the airway, oropharyngeal (No. 4). After examining manufacturing inspection reports, performance data, and the manufacturing technology used to fabricate these devices, the agency determined that noncritical CGMP requirements are sufficient to provide reasonable assurance of the safety and effectiveness of these three devices.

On September 9, 1982, in response to a petition (81P-0362), FDA clarified its intent to require critical controls only for the life supporting or life sustaining gas machine for anesthesia (21 CFR 868.5160(a)) (No. 42). Previously, in the **Federal Register** of July 16, 1982 (47 FR 31130 at 31146), FDA had identified separately the gas machine for analgesia intended for dental conscious sedation (21 CFR 868.5160(b)). In response to the petition, FDA determined that the gas machine for analgesia was neither life sustaining nor life supporting and did not meet the definition of a critical device in 21 CFR 820.3(f).

The Committee has held several meetings to discuss additions and changes to the original "Guideline List of Critical Devices." The transcripts and summary minutes for the meetings held on June 29, 1979, November 8 and 9, 1979, July 22, 1980, March 29, 1984, October 23 and 24, 1985, and March 20 and 21, 1986, are available from the Dockets Management Branch under the docket number found in the heading of this document. Data used by Committee members to prepare for the October 1985 and March 1986 meetings are also available from the Dockets Management Branch. The information available includes the Committee's vote in November 1979, the identified risks to health attributed to the use of each device, the additional CGMP requirements that apply only to critical devices, and the rationale for these additional requirements

Although the Committee discussed critical device issues at the June 1979 meeting, no voting took place. At the November 1979 meeting, the Committee recommended that 88 of 107 proposed additions be considered critical devices. The Committee reconsidered 20 of these devices at the July 1980 meeting, and as a result of presentations made by interested parties, again voted to add 19 of the 20 devices to the critical device list. In October 1985, and in March 1986, the Committee again considered the devices that had previously been recommended for the critical device list, as well as newly proposed additions to the list. Based upon information and recommendations from the classification panels and the appropriate divisions within CDRH, and based upon the recommendations of the Committee, the list of critical devices was again expanded and is now comprised of 182 devices.

To accommodate all of these changes, FDA is making available this revised and expanded "Advisory List of Critical Devices—1988." The list identifies devices by Code of Federal Regulations (CFR) part and section numbers, and by the classification names of the devices established in FDA's classification regulations (21 CFR Parts 862 through 892). For each device on the current critical device list that was also on the original list, FDA is cross-referencing the number (1 through 75) of that device on the former list.

The term "classification name" of a device is defined at 21 CFR 807.3(j) to mean "* * * the term used by the Food and Drug Administration and its classification panels to describe a device or class of devices for purposes of classifying devices under section 513 of the act." For those few devices whose classification has been proposed but is not yet final, FDA is identifying the devices by the names used in their proposed classification regulations. In its list, FDA also is cross-referencing the former names for those devices on the list that where used before the classification regulations were promulgated.

Devices which are not the subject of proposed or final classification

regulations are identified by a suitable description of their regulatory status. In those situations were not all devices identified in a section of a classification regulation are considered to be critical devices, the list describes which of the devices covered by the section are considered critical devices.

Periodically, FDA will revise its list after consulting with the Committee. Any revisions of the list will be published in the **Federal Register** and will be available from the Dockets Management Branch and from CDRH's Division of Compliance Programs, 8757 Georgia Ave., Silver Spring, MD 20910. As stated in the preamble to the CGMP regulations, FDA emphasizes that this list of devices is only illustrative and is not intended to be binding or exhaustive (43 FR 31511). Each manufacturer should continue to refer to the definition of a critical device (21 CFR 820.3(f)) in determining whether the critical device requirements apply to that manufacturer's device.

In order to allow manufacturers sufficient time to comply with critical device requirements, FDA advises that it does not intend to apply those requirements to newly added devices for a period of 180 days from the date of this notice.

A person seeking some form of administrative action with respect to the list of critical devices may file a citizen petition pursuant to 21 CFR 10.30. FDA requests that each petition address the scope of the action of relief sought, such as whether it would apply to a particular manufacturer or to all manufacturers of the subject device or devices. Guidance on how to file a petition is available from the Division of Small Manufacturers Assistance, 800-638-2041.

For the convenience of the reader, the agency is publishing its "Advisory List of Critical Devices—1988" in its entirety:

| Section or FR cite | Classification name of device | Device No. on original list | Former device name, or additional information |
|---|---|---|---|
| | **PART 868—ANESTHESIOLOGY DEVICES** | | |
| 1. 868.1200 | Indwelling blood oxygen partial pressure ($P_{o2}$) analyzer | 5 | Analyzer, oxygen, neonatal invasive |
| 2. 868.2375 | Breathing frequency monitor | | Apnea monitor. |
| 3. 868.5090 | Emergency airway needle | 43 | Needle, emergency airway. |
| 4. 868.5160(a) | Gas machine for anesthesia | 42 | Machine, gas anesthesia/analgesia, complete systems. The gas machine for analgesia (868.5160(b)) is exempt from critical device requirements |
| 5 868.5240 | Anesthesia breathing circuit | 19 | Circuit, breathing (with connector, adaptor y-piece). |
| 6. 868.5400 | Electroanesthesia apparatus | 6, 62 | Apparatus, electroanesthesia; and stimulator, electroanesthesia. |
| 7 868.5440 | Portable oxygen generator | 32 | Generator, oxygen, portable |
| 8. 868.5470 | Hyperbaric chamber. (Monoplace) | | |
| 9 868.5610 | Membrane lung for long-term pulmonary support | 41 | Lung, membrane (for long-term pulmonary support). |
| 10 868.5650 | Esophageal obturator | 2 | Airway, esophageal (obturator). |
| 11 868.5720 | Bronchial tube | 66 | Tube, bronchial (with and without connector). |
| 12. 868.5730 | Tracheal tube | 67 | Tube, tracheal (with and without connector). |
| 13. 868.5740 | Tracheal/bronchial differential ventilation tube | 68 | Tube, tracheal/bronchial, differential/ventilation (with and without connector). |
| 14. 868.5750 | Inflatable tracheal tube cuff | 27 | Cuff, tracheal tube, inflatable. |
| 15. 868.5800 | Tracheostomy tube and tube cuff | 69 | Tube, tracheostomy (with and without connector). |
| 16. 868.5810 | Airway connector | 25 | Connector, airway (extension). |
| 17. 868.5830 | Autotransfusion apparatus | 9 | Autotransfusion apparatus. |
| 18. 868.5895 | Continuous ventilator | 73, 56 | Ventilator, continuous (respirator) and respirator, neonatal ventilator. |
| 19. 868.5905 | Noncontinuous ventilator (IPPB) | 75 | Ventilator, noncontinuous (respirator). |
| 20. 868.5915 | Manual emergency ventilator | 58, 70 | Manual emergency ventilator; and resuscitator, pulmonary, manual. |
| 21. 868.5925 | Powered emergency ventilator | 70 | Unit emergency oxygen and resuscitation |
| 22. 868.5935 | External negative pressure ventilator | 74 | Ventilator, external body negative pressure, audit (cuirass). |
| | **PART 870—CARDIOVASCULAR DEVICES** | | |
| 23. 870.1025 | Arrhythmia detector and alarm | 29 | Detector and alarm arrhythmia. |
| 24. 870.1330 | Catheter guide wire | | For use with percutaneous transluminal coronary angioplasty catheters (see no. 56). |
| 25. 870.1360 | Trace microsphere | | |
| 26. 870.1750 | External programmable pacemaker pulse generator | 34 | Generator, pulse, pacemaker, external, programmable. |
| 27. 870.1800 | Withdrawal-infusion pump | 54 | Pump, withdrawal/infusion. |
| 28. 870.3250 | Vascular clip | 22 | Clip, vascular. |
| 29. 870.3260 | Vena cava clip | 23 | Clip, vena cava. |
| 30. 870.3300 | Arterial embolization device | | |
| 31. 870.3375 | Cardiovascular intravascular filter | 31 | Filter intravascular, cardiovascular. |
| 32. 870.3450 | Vascular graft prosthesis of less than 6 millimeters diameter | 47, 52 | Prosthesis, arterial graft synthetic, and prothesis vascular graft. |
| 33. 870.3460 | Vascular graft prosthesis of 6 millimeters and greater diameter. | 47, 52 | Prosthesis, arterial graft synthetic, and prosthesis, vascular graft. |
| 34. 870.3470 | Intracardiac patch or pledget made of polypropylene, polyethylene terephthalate, or polytetrafluoro-ethylene. | | |
| 35. 870.3535 | Intra-aortic balloon and control system | 10 | Balloon, intra-aortic, and control system. |
| 36. 870.3545 | Ventricular bypass (assist) device | 15 | Bypass, ventricular (assist). |
| 37. 870.3600 | External Pacemaker pulse generator | 33 | Generator, pulse, pacemaker, external. |
| 38. 870.3610 | Implantable pacemaker pulse generator | 35 | Generator, pulse, pacemaker, implantable. |
| 39. 870.3620 | Pacemaker lead adaptor | | |
| 40. 870.3650 | Pacemaker polymeric mesh bag | | |
| 41. 870.3670 | Pacemaker charger | | |
| 42. 870.3680 | Cardiovascular permanent or temporary pacemaker electrod | 30 | Electrode, pacemaker, permanent and temporary. |
| 43. 870.3700 | Pacemaker programmers | | |

| Section or FR cite | Classification name of device | Device No. on original list | Former device name, or additional information |
|---|---|---|---|
| 44. 870.3710 | Pacemaker repair or replacement material | | |
| 45. 870.3800 | Annuloplasty ring | | |
| 46. 870.3850 | Carotid sinus nerve stimulator | | |
| 47. 870.3925 | Replacement heart valve | 71 | Valve, heart replacement. |
| 48. 870.4320 | Cardiopulmonary bypass pulsatile flow generator | | |
| 49. 870.4350 | Cardiopulmonary bypass oxygenator | 44 | Oxygenator, cardiopulmonary. |
| 50. 870.4360 | Nonroller-type cardiopulmonary bypass blood pump | 13 | Blood pump, cardiopulmonary bypass, nonroller. |
| 51. 870.4370 | Roller-type cardiopulmonary bypass blood pump | 14 | Blood pump, cardiopulmonary bypass roller type. |
| 52. 870.5200 | External cardiac compressor | 24, 57 | Compressor, external, cardiac powered, and resuscitator, cardiac mechanical. |
| 53. 870.5225 | External counter-pulsating device | 26 | Counter-pulsating device, external. |
| 54. 870.5300 | DC-defibrillator (including paddles) | 28 | Defibrillator, DC-powered (including paddles). |
| 55. 870.5550 | External transcutaneous cardiac pacemaker (noninvasive) | 45 | Pacemaker, cardiac, external trans-cutaneous. |
| 56. ——— | Percutaneous transluminal coronary angioplasty (PTCA) balloon dilation catheter. | — | Premarket approval device. |
| 57. ——— | Automatic implanted cardioverter defibrilator system | | Premarket approval device. |
| | **PART 872—DENTAL DEVICES** | | |
| 58. 872.3640 | Endosseous implant | | |
| | **PART 874—EAR, NOSE, AND THROAT DEVICES** | | |
| 59. 874.3620 | Ear, nose, and throat synthetic polymer material | | |
| 60. 874.3695 | Mandibular implant facial prosthesis | | |
| 61. 874.3730 | Laryngeal prosthesis (Taub design) | 49 | Prosthesis, laryngeal. |
| 62. 874.3820 | Endolymphatic shunt | | |
| 63. 874.3850 | Endolymphatic shunt tube with valve | | |
| 64. 874.3930 | Tympanostomy tube with semipermeable membrane | | |
| 65. ——— | Ear, nose, and throat natural polymer-collagen material | | Preamendments device; not yet classified. |
| | **PART 876—GASTROENTEROLOGY-UROLOGY DEVICES** | | |
| 66. 876.3350 | Penile inflatable implant | | |
| 67. 876.5270 | Implanted electrical urinary continence device | | |
| 68. 876.5540 | A-V shunt cannula | | Included in blood access device and accessories (876.5540). |
| 69. 876.5630 | Peritoneal dialysis system and accessories | 46 | Peritoneal dialysis system, automatic delivery. |
| 70. 876.5820 | Hemodialysis system and accessories, dialysate concentrate, hollow fiber capillary dialyzers, disposable dialyzers, high permeability dialyzers, parallel flow dialyzers, single coil dialyzers, twin coil dialyzers, single needle dialysis set, dialysate delivery systems. | 36 | Dialysate concentrate added to this list. |
| 71. 876.5870 | Sorbent hemoperfusion system | 7 | Apparatus, hemoperfusion, sorbent. |
| 72. 876.5880 | Isolated kidney perfusion and transport system and accessories. | | |
| 73. 876.5955 | Peritoneo-venous shunt | | |
| 74. 46 FR 7566; January 23, 1981. | Urethal sphincter prosthesis | 51 | Prosthesis, urethra sphincter. Device not known to be in commercial distribution. |
| 75. 46 FR 7566; January 23, 1981. | Urethral replacement | 55 | Replacement, urethral. Device not known to be in distribution. |
| | **PART 878—GENERAL AND PLASTIC SURGERY DEVICES** | | |
| | (The following are class III devices. See 21 U.S.C. 360j(1).) | | |
| 76. 42 FR 63474 December 16, 1977. | Absorbable surgical sutures | 64 | Class III transitional device. |
| 77. 42 FR 63474; December 16, 1977. | Nonabsorbable surgical sutures | 64 | Class III transitional device. |
| 78. 42 FR 63474; December 16, 1977. | Polytetrafluoroethylene (Teflon) injectable | | Do. |
| | (The following are proposed classifications discussed in the **Federal Register** of January 19, 1982 (47 FR 2810).) | | |
| 79. 878.3300 | Surgical mesh | | |
| 80. 878.3500 | Polytetrafluoroethylene with carbon fibers composite implant material. | | |
| 81. 878.3530 | Inflatable breast prosthesis | | |
| 82. 878.3540 | Silicone gel-filled breast prosthesis | | |
| 83. ——— | Implanted mammary prosthesis of composite saline and gel-filled design. | | Preamendments device; not yet classified. |
| 84. 878.3610 | Esophageal prosthesis | 48 | Prosthesis, esophagus. |
| 85. 878.3720 | Tracheal prosthesis | 50 | Prosthesis, trachea. |
| 86. 878.4300 | Implantable clip | | |
| 87. 878.4750 | Implantable staple | | |
| 88. ——— | Maxillofacial prosthesis | | ENT facial prosthesis, maxillofacial. |
| | **PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES** | | |
| 89. 880.5130 | Infant radiant warmer | 12 | Bed, radiant heat. |

| Section or FR cite | Classification name of device | Device No. on original list | Former device name, or additional information |
|---|---|---|---|
| 90. 880.5400 | Neonatal incubator | 37 | Incubator, neonatal ventilator. |
| 91. 880.5410 | Neonatal transport incubator | | |
| 92. 880.5725 | Infusion pump | 53 | Term "cardiovascular" dropped since not used in classification regulation and devices not marketed as "cardiovascular infusion pumps." |
| 93. ——— | Implanted infusion pump | | Premarket approval device. |
| | **PART 882—NEUROLOGICAL DEVICES** | | |
| 94. 882.5030 | Methyl methacrylate for aneurysmorrhaphy | | |
| 95. 882.5150 | Intravascular occluding catheter | 17 | Catheter, intravascular occluding. |
| 96. 882.5200 | Aneurysm clip | 20 | Clip aneurysm. |
| 97. 882.5225 | Implanted malleable clip | | |
| 98. 882.5250 | Burr hole cover | | |
| 99. 882.5300 | Methyl methacrylate for cranioplasty | | |
| 100. 882.5320 | Preformed alterable cranioplasty plate | | |
| 101. 882.5330 | Preformed nonalterable cranioplasty plate | | |
| 102. 882.5360 | Cranioplasty plate fastener | | |
| 103. 882.5550 | Central nervous system fluid shunt and components | 59 | Shunt, central nervous system fluid and components. |
| 104. 882.5820 | Implanted cerebellar stimulator | 60 | Stimulator, cerebella implanted. |
| 105. 882.5830 | Implanted diaphragmatic/phrenic nerve stimulator | 61 | Stimulator, diaphragmatic/phrenic nerve, implanted. |
| 106. 882.5840 | Implanted intracerebral/subcortical stimulator for pain relief | 63 | Stimulator, intracerebral/subcortical implanted (pain relief). |
| 107. 882.5850 | Implanted spinal cord stimulator for bladder evacuation | | |
| 108. 882.5860 | Implanted neuromuscular stimulator | | |
| 109. 882.5870 | Implanted peripheral nerve stimulator for pain relief | | |
| 110. 882.5880 | Implanted spinal cord stimulator for pain relief | | |
| 111. 882.5880 | Epidural spinal electrode | | Component of implanted spinal cord stimulator for pain relief (No. 110). |
| 112. 882.5900 | Preformed craniosynostosis strip | | |
| 113. 882.5910 | Dura substitute | | |
| 114. 882.5950 | Artificial embolization device | 65 | Thromboemboli, intra-vascular (artificial embolization device). |
| 115. ——— | Lyophilized human (cadaver) dura mater | | Preamendments device; not yet classified. |
| 116. ——— | Stabilized epidural spinal electrode | | Premarket approval device. |
| 117. ——— | Implanted intracranial pressure monitor | | Do. |
| 118. ——— | Totally implanted spinal cord stimulator for pain relief | | Do. |
| | **PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES** | | |
| 119. 884.5360 | Contraceptive intrauterine device (IUD) and introducer | 38 | Intrauterine contraceptive device (IUD) and introducer. |
| 120. 884.5380 | Contraceptive tubal occlusion device (TOD) and introducer | 11, 21, 72 | Band, tubal occlusion; clip, tubal occlusion; valve, tubal occlusion. |
| | **PART 886—OPHTHALMIC DEVICES** | | |
| 121. 886.3300 | Absorbable implant (scleral buckling method) | | |
| 122. 886.3400 | Keratoprosthesis | 39 | Keratoprosthesis, noncustom. |
| 123. 886.3600 | Intraocular lens | 40 | Lens, intraocular, ophthalmic; class III transitional device. |
| 124. 886.3920 | Eye valve implant | | |
| | **PART 888—ORTHOPEDIC DEVICES** | | |
| 125. 888.3000 | Bone cap | | |
| 126. 888.3010 | Bone fixation cerclage | | |
| 127. 888.3020 | Intramedullary fixation rod | | |
| 128. 888.3025 | Passive tendon prosthesis | | |
| 129. 888.3027 | Polymethylmethacrylate (PMMA) bone cement | | Class III transitional device. |
| 130. 888.3030 | Single/multiple component metallic bone fixation appliance and accessories. | | |
| 131. 888.3040 | Smooth or threaded metallic bone fixation fastener | | |
| 132. 888.3050 | Spinal interlaminal fixation orthosis | | |
| 133. 888.3060 | Spinal intervertebral body fixation orthosis | | |
| 134. 888.3100 | Ankle joint metal/composite semiconstrained cemented prosthesis. | | |
| 135. 888.3110 | Ankle joint metal/polymer semiconstrained cemented prosthesis. | | |
| 136. 888.3120 | Ankle joint metal/polymer non-constrained cemented prosthesis. | | |
| 137. 888.3150 | Elbow joint metal/metal or metal/polymer constrained cemented prosthesis. | | |
| 138. 888.3160 | Elbow joint metal/polymer semi-constrained cemented prosthesis. | | |
| 139. 888.3170 | Elbow joint radial (hemi-elbow) polymer prosthesis | | |
| 140. 888.3180 | Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis. | | |
| 141. 888.3200 | Finger joint metal/metal constrained uncemented prosthesis | | |
| 142. 888.3210 | Finger joint metal/metal constrained cemented prosthesis | | |
| 143. 888.3220 | Finger joint metal/polymer constrained cemented prosthesis | | |
| 144. 888.3230 | Finger joint polymer constrained prosthesis | | |
| 145. 888.3300 | Hip joint metal constrained cemented or uncemented prosthesis. | | |

| Section or FR cite | Classification name of device | Device No. on original list | Former device name, or additional information |
|---|---|---|---|
| 146. 888.3310 | Hip joint metal/polymer constrained cemented or uncemented prosthesis. | | |
| 147. 888.3320 | Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis. | | |
| 148. 888.3330 | Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis. | | |
| 149. 888.3340 | Hip joint metal/composite semi-constrained cemented prosthesis. | | |
| 150. 888.3350 | Hip joint metal/polymer semi-constrained cemented prosthesis. | | |
| 151. 888.3360 | Hip joint femoral (hemi-hip) metallic cemented or uncemented prosthesis. | | |
| 152. 888.3370 | Hip joint (hemi-hip) acetabular metal cemented prosthesis | | |
| 153. 888.3380 | Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis. | | |
| 154. 888.3390 | Hip joint femoral (hemi-hip) metal/polymer cemented or uncemented prosthesis. | | |
| 155. 888.3400 | Hip joint femoral (hemi-hip) metallic resurfacing prosthesis | | |
| 156. 888.3410 | Hip joint metal/polymer semiconstrained resurfacing cemented prosthesis. | | |
| 157. 888.3480 | Knee joint femorotibial metallic constrained cemented prosthesis. | | |
| 158. 888.3490 | Knee joint femorotibial metal/composite non-constrained cemented prosthesis. | | |
| 159. 888.3500 | Knee joint femorotibial metal/composite semi-constrained cemented prosthesis. | | |
| 160. 888.3510 | Knee joint femorotibial metal/polymer constrained cemented prosthesis. | | |
| 161. 888.3520 | Knee joint femorotibial metal/polymer non-constrained cemented prosthesis. | | |
| 162. 888.3530 | Knee joint femorotibial metal/polymer semi-constrained cemented prosthesis. | | |
| 163. 888.3540 | Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis. | | |
| 164. 888.3550 | Knee joint patellofemorotibial ploymer/metal/metal constrained cemented prosthesis. | | |
| 165. 888.3560 | Knee joint patellofemorotibial polymer/metal/polymer semiconstrained cemented prosthesis. | | |
| 166. 888.3570 | Knee joint femoral (hemi-knee) metallic uncemented prosthesis. | | |
| 167. 888.3580 | Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis. | | |
| 168. 888.3590 | Knee joint tribial (hemi-knee) metallic resurfacing uncemented prosthesis. | | |
| 169. 888.3640 | Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis. | | |
| 170. 888.3650 | Shoulder joint metal/polymer non-constrained cemented prosthesis. | | |
| 171. 888.3660 | Shoulder joint metal/polymer semi-constrained cemented prosthesis. | | |
| 172. 888.3680 | Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis. | | |
| 173. 888.3690 | Shoulder joint humeral (hemi-shoulder) metallic uncemented prosthesis. | | |
| 174. 888.3720 | Toe joint polymer constrained prosthesis | | |
| 175. 888.3730 | Toe joint phalangeal (hemi-toe) polymer prosthesis | | |
| 176. 888.3750 | Wrist joint carpal lunate polymer prosthesis | | |
| 177. 888.3760 | Wrist joint carpal scaphoid polymer prosthesis | | |
| 178. 888.3770 | Wrist joint carpal trapezium polymer prosthesis | | |
| 179. 888.3780 | Wrist joint polymer constrained prosthesis | | |
| 180. 888.3790 | Wrist joint metal constrained cemented prosthesis | | |
| 181. 888.3800 | Wrist joint metal/polymer semi-constrained cemented prosthesis. | | |
| 182. 888.3810 | Wrist joint ulnar (hemi-wrist) polymer prosthesis | | |

Interested persons may submit to the Dockets Management Branch (address above) written comments on the list. Comments will be considered in determining if further changes to the "Advisory List of Critical Devices—1988" are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. The list, references, and comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-5884 Filed 3-16-88; 8:45 am]

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Vol. 53, No. 52

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**S. 1447/Pub. L. 100-258**

To designate Morgan and Lawrence Counties in Alabama as a single metropolitan statistical area. (Mar. 14, 1988; 102 Stat. 27; 1 page) Price: $1.00